HOBSON V. WILSON

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Oct. 29, 1981

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Oct. 1981 -
Nov. 1981

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

MOTION FOR EXPEDITED RESPONSE TO REQUESTS FOR ADMISSION

Plaintiffs move the court for an order requiring defendants to respond to plaintiffs' first and second requests for admission simultaneously with service of defendants' pre-trial briefs. In support of this motion plaintiffs rely on the accompanying memorandum.

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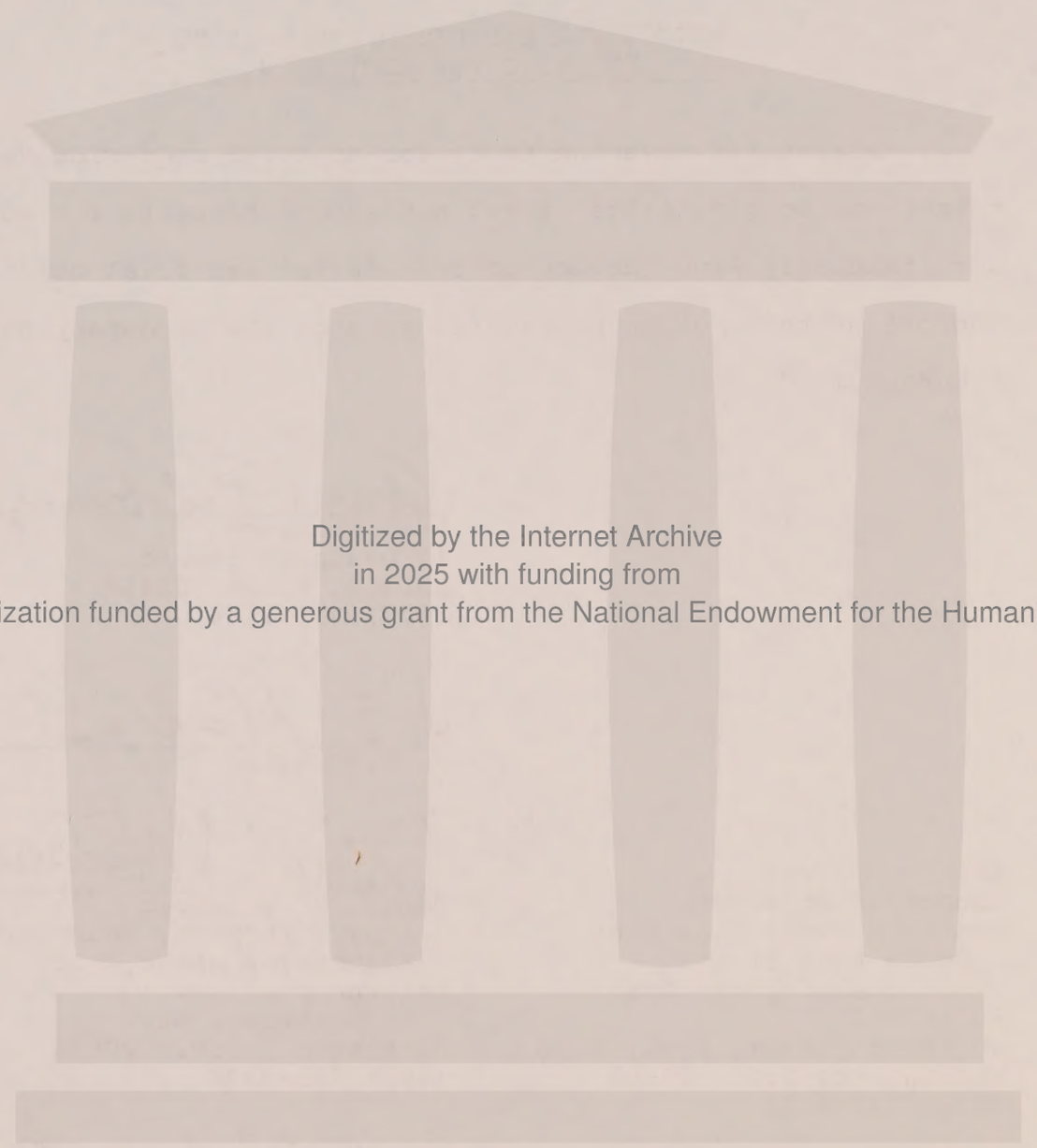

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

MEMORANDUM IN SUPPORT OF
MOTION FOR EXPEDITED RESPONSE TO
REQUESTS FOR ADMISSION

The subjects of plaintiffs' first and second requests for admissions are limited to discovery issues joined in previous motions to compel heard by the court October 14, 1981. At that hearing the court directed plaintiffs to seek admissions regarding certain matters, and plaintiffs' first and second request for admissions are limited to those subjects.

Expedited response to these requests for admissions is necessary for orderly pre-trial preparation of the case.

Respectfully submitted,

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(207) 925-1144

J. E. McNeil
J. E. McNeil

Of Counsel:

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

ORDER

This matter having come before the court on plaintiffs' Motion for Expedited Response to Requests for Admission, and it appearing that this motion should be granted, it is this _____ day of _____, 1981

ORDERED that defendants shall respond to plaintiffs' first and second requests for admissions simultaneously with service of defendants' pre-trial briefs.

_____
UNITED STATES DISTRICT JUDGE

Certificate of Service

I certify that a copy of the foregoing Motion to Expedite Response to Requests for Admissions, accompanying memorandum, and proposed order, was personally served this 26th day of October, 1981 on David White and Laura Bonn.

Daniel M. Schember

Daniel M. Schember

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

NOTICE OF FILING

The attached page 4 to substitute for page 4 of plaintiffs' pre-trial brief was filed with the Court this 26th day of October, 1981.

Respectfully submitted,

J. E. McNeil

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Gaffney, Anspach, Schember,
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Attorney for Plaintiffs

illegal activities of the MPD, in particular as relating to 1029 Vermont. 2 to 3 hrs.

Larry Canada will testify about phonetaps, Pollock, Anne Kolego, and PCPJ. 1-1/2 to 2 hrs.

Mike Canfield will testify about the activities of the intelligence division of the MPD. 1 to 1-1/2 hrs.

The Rev. John Carter will testify about "no-knock" and the BUF. 1 to 1-1/2 hrs.

Charlie Cassells will testify about BUF, the Rev. Eaton, the PPC, "no-knock", and ECTC. 1-1/2 to 2 hrs.

Paul A. Chesser will testify concerning his activities as a supervisor of the Intelligence Division of the MPD. 45 minutes to 1 hr.

Mel Kovacs will testify regarding demonstrations at the site of the Three Sisters Bridge.

Carol Cullum will testify about PCPJ and Annie Kolego. 2 to 3 hrs.

Jack Davis will testify concerning PCPJ and Mayday. 1 to 1-1/2 hrs.

Rennie Davis will testify about Anne Kolego, PCPJ, counter-inaugural, the Mayday Collective, and Pollock. 1-1/2 to 2 hrs.

Roger O. Day will testify about the activities of the Intelligence Division of MPD. 1 to 1-1/2 hours.

Thomas J. Deakin will testify about domestic intelligence and COINTELPRO, in particular COINTELPRO-Black Nationalists. 1 to 1-1/2 hrs.

John Dean will testify about the White House relationship to the MPD. 1 to 1-1/2 hrs.

Dave Dellinger will testify about the effects of the "head-tax". 1 to 1-1/2 hrs.

May DeOreo will testify concerning the Church Committee

Certificate of Service

I certify that a copy of the foregoing Notice of Filing was mailed postage pre-paid to David White, Department of Justice, Washington, D.C. 20530 and Laura Bonn, Assistant Corporation Counsel, District Building, 14th & E Streets, N.W., Washington, D.C. 20004 this 26th day of October, 1981.

J. E. McNeil

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

FRESH MOTION TO COMPEL ANSWERS TO PLAINTIFFS' 13th AND 14th SETS OF INTERROGATORIES, TO DEFENDANT DISTRICT OF COLUMBIA

Plaintiffs move the Court for an order compelling responses under oath to plaintiffs' thirteenth and fourteenth sets of interrogatories on the grounds that

(1) the interrogatory answers served are not signed under oath; and

(2) the response to Interrogatory 5 of the fourteenth set is evasive.

In support of this motion plaintiffs rely on the accompanying memorandum.

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J. E. McNeil

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF
FRESH MOTION TO COMPEL ANSWERS TO
PLAINTIFFS' 13TH AND 14TH SETS OF
INTERROGATORIES, TO DEFENDANT
DISTRICT OF COLUMBIA

Plaintiffs are entitled to sworn answers to their interrogatories. The omission is significant, moreover, since at the hearing held October 14, 1981 counsel for the District of Columbia defendants informed plaintiffs' counsel that Richard Brooks, not John Bourbon, prepared the interrogatory responses. Richard Brooks is a trial witness. If he is responsible for the interrogatory responses, plaintiffs wish to have his statements under oath for use at trial.

Interrogatory 5 of plaintiffs' fourteenth set asked:

> 5. Please state the complete name and current business and residential addresses for the person referred to as "Carlson" in the attached exhibit 11 to the Campbell deposition.

Defendant's response was "Unknown."

The answer is evasive. It is obvious that the full name of Carlson appears on Campbell Exhibit 11 (attached) in the space below "Charles Marcum" and above "John Zello." The name was deleted when deponent Campbell produced the document. The District of Columbia defendants have interposed no claim of privilege against revealing Carlson's full name, and, at this late date, must be deemed to have waived any possible privilege they may have had.

Respectfully submitted,

Anne Pilsbury
17 Danforth Street
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J. E. McNeil

Of Counsel:

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Attorneys for Plaintiffs

OUTLINE OF INCIDENTS INVOLVING ILLEGAL ENTRY

1. 1029 Vermont Ave., N.W., WDC - May - December, 1969

Principals: MPD Personnel

George Outer
Jack L. Acree
Charlie Robinson
Charles Marcum

John Cello (?)
Joseph A. Mahoney, II, SA, FBI
Gerald Grimaldi, SA, FBI

Stolen: Stock Certificates of Singer Corporation
Correspondence between New Left and RVN

Investigation: Marcum furnished allegation. Carlson corroborated general incident. Remainder of principals deny knowledge. On 10/21/69, Coiker, MPD advised Bureau that New Mobe, located at address had Singer Stock. No other evidence of fruits existence located. alleges financial records located in drawer in office to which did not have access. told MPD of their existence and inability to obtain them. was not again asked anything about them.

Campbell Pl Ex 11

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

ORDER

This matter having come before the Court on plaintiffs' Fresh Motion to Compel Answers to Plaintiffs' 13th and 14th Sets of Interrogatories, to Defendant District of Columbia, and it appearing this motion should be granted, it is this _____ day of _____, 1981

ORDERED, as follows:

(1) Defendant shall serve sworn answers to plaintiffs' interrogatories within 5 days of the date of this order;

(2) Defendant's answers shall include a full, non-evasive answer to Interrogatory 5 of plaintiffs' 14th set, based on examination of the undeleted version of deponent Campbell's Exhibit 11 and all other pertinent information available to Defendant, including personnel records.

_____
UNITED STATES DISTRICT JUDGE

Certificate of Service

I certify that a copy of the foregoing Fresh Motion to Compel Answers to Plaintiffs' 13th and 14th Sets of Interrogatories, to Defendant District of Columbia, ~~and~~ accompanying memorandum, and proposed order was personally served this 26th day of October, 1981 on David White and Laura Bonn.

Daniel M. Schember

CERTIFICATE OF SERVICE

I certify that the foregoing Motion for Leave to File Pre-Trial Brief One Day Out of Time, Memorandum in support of, and proposed Order was hand-delivered to David White and mailed postage pre-paid to Laura Bonn, Assistant Corporation Counsel, District Building, 14th & E Streets, N.W., Washington, D.C. 20004, this 23rd day of October, 1981.

J. E. McNeil

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Gaffney, Anspach, Schember,
Klimaski & Marks, P.C.
1712 N Street, N.W.
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(202) 223-9274

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

MOTION FOR LEAVE TO FILE PRE-TRIAL BRIEF
ONE DAY OUT OF TIME

Plaintiffs respectfully move this Court for leave to file one day out of time their pre-trial brief. In support of this motion they rely on the attached memorandum.

Respectfully submitted,

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J. E. McNeil

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Of Counsel:

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO FILE
PRE-TRIAL BRIEF OUT OF TIME

In support of their motion for leave to file pre-trial brief out of time, plaintiffs state the following:

Plaintiffs' lead counsel was out of town on business for three weeks. When he returned he had six days in which to complete a brief for the Supreme Court, leaving only four days to participate in preparation of the pre-trial brief.

During that four days, both local counsel fell ill and, although they did continue working, were substantially slowed down in their efforts.

Respectfully submitted,

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J. E. McNeil

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Of Counsel:

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RECEIVED NOV 2 1981

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al. :

Plaintiffs :

v. : Civil Action No. 76-1326

JERRY WILSON, et al. :

Defendants :

MOTION OF DISTRICT OF COLUMBIA DEFENDANTS FOR AN EXTENSION OF TIME WITHIN WHICH TO RESPOND TO PLAINTIFFS' PRE-TRIAL BRIEF

The District of Columbia defendants respectfully move this Court for an extension of time within which they may respond to plaintiffs' pre-trial brief from Friday, October 30, 1981, up to and including Tuesday, November 3, 1981. As grounds therefor, attorney for District of Columbia defendants asserts that plaintiffs' pre-trial brief is 30 pages long and contains numerous sub-divisions with detailed factual allegations which require complete counter-responses. Counsel for these defendants has completed a rough draft of their response but still needs additional time for the draft to be typed and edited in its final form. This brief extension will not delay any of the scheduled proceedings nor prejudice the plaintiffs.

Judith W. Rogers per LBB
JUDITH W. ROGERS
Corporation Counsel, D.C.

John H. Suda per LBB
JOHN H. SUDA
Deputy Corporation Counsel, D.C.

Laura W. Bonn
LAURA W. BONN
Assistant Corporation Counsel, D.C.
Attorneys for District of Columbia Defendants
District Building
Washington, D.C. 20004
727-6348

UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF COLUMBIA

JULIUS HOBSON, et al. :

Plaintiffs :

v. : Civil Action No. 76-1326

JERRY WILSON, et al. :

Defendants :

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF DISTRICT OF COLUMBIA DEFENDANTS FOR AN EXTENSION OF TIME WITHIN WHICH TO RESPOND TO PLAINTIFFS' PRE-TRIAL BRIEF

Rule 6(b), Federal Rules of Civil Procedure.

Judith W. Rogers per LBB

JUDITH W. ROGERS
Corporation Counsel, D.C.

John H. Suda per LBB

JOHN H. SUDA
Deputy Corporation Counsel, D.C.

Laura W. Bonn

LAURA W. BONN
Assistant Corporation Counsel, D.C.
Attorney for District of Columbia
Defendants
District Building
Washington, D.C. 20004

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of District of Columbia Defendants for an Extension of Time Within Which to Respond to Plaintiffs' Pre-Trial Brief, together with Memorandum of Points and Authorities in Support thereof and Order, was mailed, postage prepaid, to Daniel Schember, Esq., 1712 N Street, N.W., Washington, D.C; and Herb Semmel, Esq., 1624 Crescent Place, N.W., Washington, D.C. 20009;and David White, Attorney for Department of Justice, Washington, D.C. 20530, this 30th day of October, 1981.

Laura W. Brown

Assistant Corporation Counsel, D.C.
Attorney for District of Columbia
Defendants
District Building
Washington, D.C. 20004

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.	:	
Plaintiffs	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et al.	:	
Defendants	:	

ORDER

This matter is before the Court on the motion of the District of Columbia defendants for an extension of time within which to respond to plaintiffs' pre-trial brief up to and including November 3, 1981. Upon consideration of the motion, the memorandum of points and authorities filed in support thereof and the entire record herein, it is, by the Court this ___ day of _____, 1981,

ORDERED: That the motion of District of Columbia defendants for an extension of time be, and the same is, hereby granted; and, it is,

FURTHER ORDERED: That the District of Columbia defendants have up to and including November 3, 1981, to respond to plaintiffs' pre-trial brief.

UNITED STATES DISTRICT COURT
JUDGE

RECEIVED NOV 2 1981

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

MOTION BY FEDERAL DEFENDANTS FOR ENLARGEMENT OF TIME WITHIN WHICH TO FILE PRE-TRIAL BRIEF

Defendants William H. Webster, George C. Moore, Courtland J. Jones, Gerald Grimaldi, and Gerould Pangburn, through their undersigned counsel and pursuant to Rule 6 of the Federal Rules of Civil Procedure and paragraph 14 of the Pre-Trial Order of August 24, 1981, move for an enlargement of time to and including November 4, 1981, within which to serve and file their pre-trial brief. The date on which the pre-trial brief is presently due is October 30, 1981.

In support of this motion, defendants aver (1) that the plaintiffs' pre-trial brief was due on October 20, 1981, but not filed and served until October 22, 1981; (2) the issues raised by the plaintiffs' pre-trial brief have required the consideration and preparation of papers in addition to the federal defendants' pre-trial brief; and (3) the issues and facts raised by the pre-trial briefs are of such complexity that counsel has been unable to complete the papers satisfactorily in the time allotted.

Defendants respectfully request, therefore, that they be granted an enlargement of time to and including November 5, 1981, within which to file their pre-trial brief.

Respectfully submitted,

J. PAUL McGRATH
Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge
BROOK HEDGE

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Attorneys for federal defendants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

This cause having come before the Court on motion by the federal defendants for enlargement of time within which to file their pre-trial brief, and the Court being fully advised in the premises, it is this _____ day of _____, 1981,

ORDERED that the motion be, and hereby is, GRANTED, and federal defendants shall have to and including November 5, 1981, within which to file their pre-trial brief.

_____
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing MOTION BY FEDERAL DEFENDANTS FOR ENLARGEMENT OF TIME WITHIN WHICH TO FILE PRE-TRIAL BRIEF and proposed ORDER.

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DAVID H. WHITE
Attorney, Department of Justice
Washington, D.C. 20530

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al	:	
Plaintiffs,	:	
v.	:	Civil Action NO. 76-1326
JERRY WILSON, et al	:	
Defendants.	:	

VOIR DIRE

1. I will read the names of the District of Columbia defendants then I will ask any member of the panel who knows any one of them to please so indicate.

2. I will read the names of the defendants and then I will ask any member of the panel who knows any one of them to please so indicate.

3. Is there any member of the jury panel who is now or was formerly employed by the District of Columbia, or who has some member of their immediate family employed or formerly by the District of Columbia?

4. The evidence in this case is likely to indicate a conflict between the testimony of certain police officers and FBI agents and certain other person. Is there anyone on the jury panel who feels that police officers because of their position, are any less likely to be telling the truth than persons who are not police officers.

5. Has anyone on the jury panel or any member of your immediate family had any personal experience in which you have suffered any personal injury or any property damage in connection with any demonstrations or civil disorders or riots of any kind at any time?

6. Are any of you lawyers or law students, or have any of you ever studied law in the past?

7. At the end of the next series of questions I am going to ask that each pweson who has an affirmative answer to one or more of them stand and come to the bench.

Again, let me say that these questions are not intended to pry into your personal background, background, but to assist us in choosing a fair and impartial jury panel.

(a) Have any or you, or your colse family or friends, ever been the victim of a crime?

(b) Have any of you, or your relatives or friends, ever been a witness to an alleged criminal offense?

(c) Have you, or any members of your family ever been arrested or convicted of a criminal offense.

If any of you have a "yes" answer to any or all the questions, please stand and form a line, and you will be permitted to approach the bench and answer in privacy.

8. At the end of the next series of questions I am going to ask that each person who has an affirmative answer to one or more of them stand and come to the bench.

(a) Have any of you or your close family or friends ever been involved in a civil suit against the District.

(b) Have any of you or your close friends or family ever filed a claim against the District.

(c) Have any of you or your close family or friends ever had any contact with the District or the Police Dept. Which you consider particularly favorable or unfavorable.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et. al.	:	
Plaintiffs,	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et. al.	:	
Defendants.	:	

DEFENDANT'S JURY INSTRUCTION NO. 1

Plaintiff in this case seeks money damages from the defendant's alleged violations of their civil and constitutional rights. Defendants deny that they acted unlawfully and that their acts caused no legal injury to these plaintiff. During your deliberations you must decide which if any claims plaintiffs have established by a preponderance of the evidence against these defendants. Only if you find liability may you consider the question of money damages.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et. al.	:	
Plaintiffs,	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et. al.	:	
Defendants.	:	

DEFENDANTS' JURY INSTRUCTION NO. 2

Standardized Civil Jury Instruction for the District of Columbia 2-1 (Evidence in the Case)

DEFENDANT'S JURY INSTRUCTION No. 3

Standardized Civil Jury Instruction for the District of Columbia 1-10 (Sympathy, prejudice, passion)

DEFENDANTS' JURY INSTRUCTION No. 4

Standardized Civil Jury Instruction for the District of Columbia 1-1 (Function of the Court)

DEFENDANTS' JURY INSTRUCTION NO. 5

Standardized Civil Jury Instruction for the District of Columbia 1-2 (Function of the Jury)

DEFENDANTS' JURY INSTRUCTION NO. 6

Standardized Civil Jury Instruction for the District of Columbia 2-8 (Burden of Proof)

DEFENDANTS' JURY INSTRUCTION NO. 7

(Conspiracy - Definition)

Plaintiffs have alleged that defendants engaged in a conspiracy to deprive them of their constitutional rights. The essence of a conspiracy is an agreement, together with an overt act, to do an unlawful act, or a lawful act in an unlawful manner. Before you may find defendant liable in this regard you must find not only the fact of a conspiracy bur also that the acts undertaken in furtherrance of the conspiracy are in themselves unlawful. Thus, if you find that the defendant have agreed to act together but committed

no illegal acts you must find for the defendants. If you find that one or more of the defendants have committed an unlawful act but also fail to find that said acts were by furtherance of a common agreed upon scheme you may only hold those defendants who committed the unlawful act liable.

In your deliberation as to whether defendants entered into a conspiracy you need not find an express or formal agreement. On the other hand, the mere fact that both the federal and D. C. defendants were engaged in law enforcement work is not, standing alone, evidence of a conspiracy. In sum, you must find something more than both sets of defendants involved in the same kind of work, an agreement, tacit or express, to do an unlawful act or a lawful act in an unlawful manner ans ome overt act in furtherance of the conspiracy.

See, Fitzgerald v. Seamans, 384 F. Supp. 688 (D.C. D.C. 1974) affirmed in part, 180 U.S. App. D.C. 75, 553 F. 2d 220, Edwards v. James Stewart & Co. 82 U.S. App. D.C. 123,160 F. 2d 935 (1947).

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs.	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

EXHIBIT LIST

Exhibit No.

1. General Order No. 7-6-4
2. General Order No. 7-6-4(a)
3. General Order No. 101
4. General Order No. 304

EXHIBIT 1

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Metropolitan Police Department

December 27, 1966

GENERAL ORDER NO. 7-G-4
Series 1966

SUBJECT: ORGANIZATION OF THE INTELLIGENCE DIVISION

The purpose of this order is to establish the organization, functions, and responsibilities of the Intelligence Division. This division shall be responsible for the control of criminal gathering, organized criminal activity, and rackets through continuous investigative procedures to gather information. This order consists of the following numbered sections:

I. REFERENCES
II. ORGANIZATION
III. FUNCTIONS AND RESPONSIBILITIES
IV. ADMINISTRATIVE ACTIONS
V. EFFECTIVE DATE

I. REFERENCES

A. General Order Number 7, Series 1966, dated November 10, 1966.

B. General Order Number 7-4, Series 1961, [illegible] December 7, 1966.

C. General Order Number 7-G, Series 1966, dated December 27, 1966.

II. ORGANIZATION

A. The Intelligence Division shall be commanded by a director who will be directly responsible to the Assistant Chief of Police of Inspectional Services.

B. The Intelligence Division shall be divided into the following three sections: (Enclosure #1, Organizational Chart)

1. Security Information
2. Organized Crime Section
3. Rackets Section

IV. ADMINISTRATIVE ACTION

A. Personnel

1. The personnel, personnel positions, and equipment of the Special Investigations Squad are hereby transferred to the Intelligence Division under Inspectional Services.

2. The Intelligence Division shall be staffed as shown on the attached Manning Table (Enclosure #2), subject to fiscal and personnel limitations.

B. Property

The transfer of property responsibility will be coordinated through the Property Control Section of the Property Division at the physical relocation of the above named individuals.

V. EFFECTIVE DATE

This order is effective January 1, 1967.

John B. Layton

John B. Layton
Chief of Police

ENCLOSURE #1

ORGANIZATIONAL CHART
INTELLIGENCE DIVISION

ENCLOSURE #2

MANNING TABLE
INTELLIGENCE DIVISION

1 Director
2 Lieutenants
3 Sergeants
8 Police officers

TOTALS
UNIFORM 14/14

NOTE: The above personnel are to be assigned to the following sections:

Security Information Section

Organized Crime Section

Rackets Section

EXHIBIT 2

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Metropolitan Police Department

December 24, 1969

GENERAL ORDER NO. 7-G-4(a)
Series 1966

SUBJECT: Organization, Functions, and Staffing of the Intelligence Division

The purpose of this order is to prescribe the organizational structure, define the mission and functions, and establish the manpower authorization for the Intelligence Division. This order consists of the following numbered sections:

I. REFERENCES
II. MISSION
III. ORGANIZATION
IV. FUNCTIONS
V. ORGANIZATIONAL CHART
VI MANNING TABLE
VII. ORDER RESCINDED
VIII. EFFECTIVE DATE

I. REFERENCES

A. General Order Number 7, Series 1966, dated November 18, 1966
B. General Order Number 7-A, Series 1966, dated December 3, 1966
C. General Order Number 7-G, Series 1966, dated December 27, 1966
D. General Order Number 7-G-4, Series 1966, dated December 27, 1966

II. MISSION

The mission of the Intelligence Division is to gather, record, and provide to appropriate elements of the Department, information on persons groups, and organizations whose activities might be detrimental to the proper functioning of local, state, or national governments.

This Division is also charged with the responsibility of establishing and maintaining intelligence liaison with other governmental agencies and organizations, in addition to processing applications of detective agencies' licenses and commissions for Special Officers.

III. ORGANIZATION

A. The Intelligence Division shall be commanded by a Director, who will be immediately supervised by the Assistant Chief of Police for Inspectional Services.

B. The Intelligence Division shall be organizationally divided into the following sections, as depicted in Section V:

1. Security Information Section
2. Organized Crime and Rackets Section
3. Special Officers Section

IV. FUNCTIONS

A. The Security Information Section shall:

1. Be responsible for the assimilation and dissemination of data on conspirator and demonstrator groups that threaten the security of national and local government.

2. Be responsible for collecting and cataloging information on individuals and groups involved in demonstrations.

3. Be responsible for securing information about the membership of violent and radical organizations.

4. Be responsible for maintaining contact with appropriate personnel at embassies so that this Department will be aware of any problems that could develop which would require police action.

B. The Organized Crime and Rackets Section shall:

1. Assimilate and disseminate information on organized crime.

2. Collect current information on crime conditions that are susceptible to organization and syndicate control.

3. Establish and maintain liaison with federal agencies for the purpose of exchanging criminal intelligence information.

4. Maintain an index record on individuals believed to be involved in organized criminal activity, and confidence operators.

5. Investigate all allegations of fraudulent business practices.

6. Be responsible for the investigation of all types of confidence games.

C. Morals Division.

The Morals Division shall be commanded by a director who is directly responsible to the Inspectional Services Officer, Inspectional Services Bureau. The mission of the Morals Division is to suppress vice activity and to investigate vice cases, in order to [illegible] consistent action against violators. In addition, the division shall provide liaison in all vice enforcement matters which require communication or cooperative effort between an organizational element of the department and any other governmental or private agency. The specific functions of this division are organizationally divided among four branches as follows:

1. The Administrative Branch shall:

   a. Prepare, process, and control all incoming and outgoing correspondence of the Morals Division.

   b. Maintain files and records pertaining to the operation of the Morals Division.

   c. Maintain personnel record files on Morals Division civilian employees.

   d. Provide technical assistance to other units of the department.

2. The Gambling and Liquor Control Branch shall:

   a. Investigate violations of all laws and regulations related to the conducting of a lottery, horse racing and sporting events, bookmaking, or other gambling activity.

   b. Assist organizational element commanders in the investigation of gambling activities, upon request, or when the investigation extends beyond the boundaries of one patrol district.

   c. Investigate violations relating to the control of alcoholic beverages or liquor particularly those violations concerning the after hours sale of liquor, sale of untaxed liquor, illegal sale of liquor to minors, and unlicensed sale of liquor.

3. The Narcotic Branch shall:

   a. Investigate violation of all laws and regulations

related to the control of narcotics and controlled drugs.

b. Assist organizational element commanders in the investigation of narcotics or controlled drug traffic, upon request, or when the investigation extends beyond the boundaries of one patrol district.

c. Assist in the preparation of all narcotics and controlled drug arrest cases for court and receive narcotic evidence for the purpose of taking it to the Bureau of Narcotics and Dangerous Drugs laboratory for analysis.

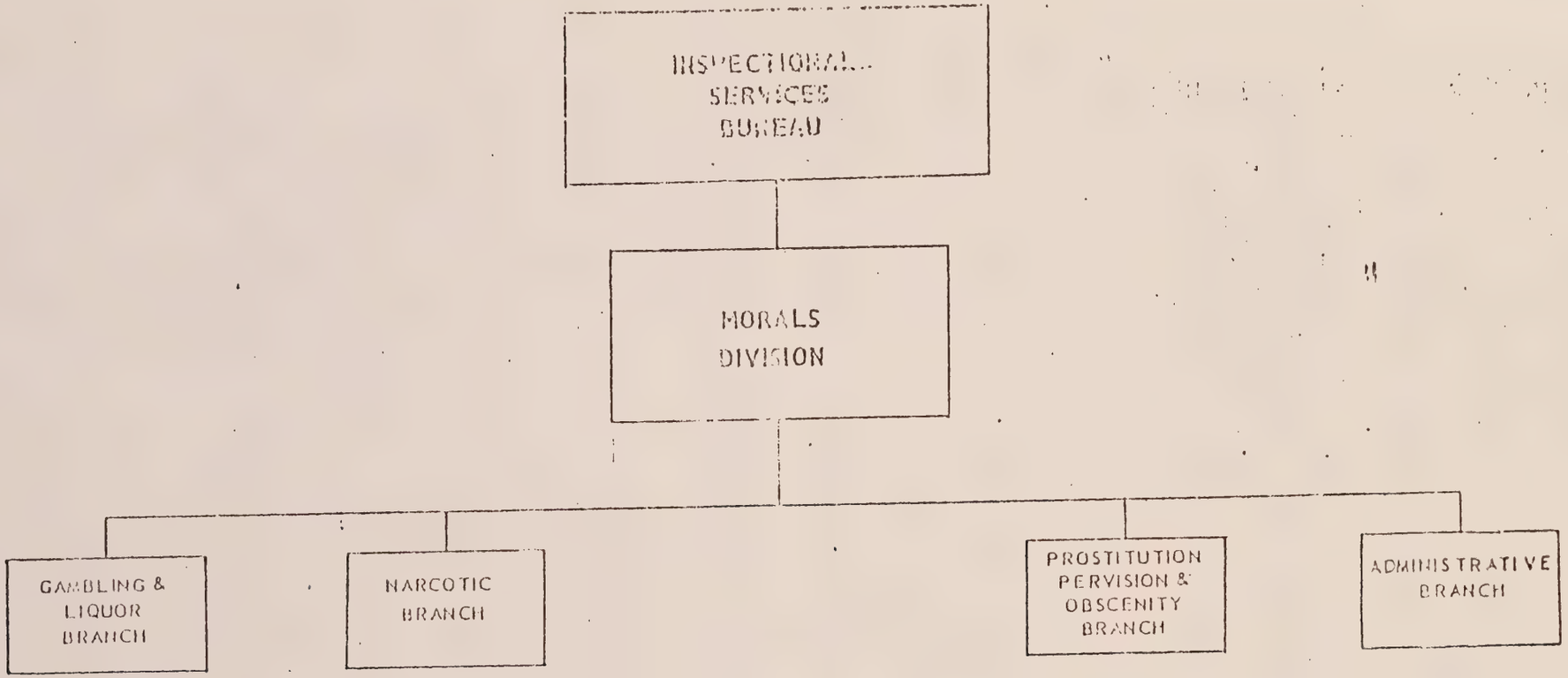
d. Conduct inspections of drug records and stocks of those organizations or individuals involved in the legitimate distribution or dispensing of controlled drugs.

4. The Prostitution, Perversion and Obscenity Branch shall:

a. Engage in enforcement action necessary to control prostitution, perversion, indecent performances, indecent publications, and indecent acts.

b. Collect information on prostitutes, sex deviates, and obscenity violators.

c. Assist organizational element commanders in the investigation of prostitution, perversion, and obscenity violators, upon request, or when the investigation extends beyond the boundaries of one patrol district.


INSPECTIONAL SERVICES BUREAU
MORALS DIVISION
GAMBLING & LIQUOR BRANCH
NARCOTIC BRANCH
PROSTITUTION PERVISION & OBSCENITY BRANCH
ADMINISTRATIVE BRANCH

D. Intelligence Division.

The Intelligence Division shall be commanded by a director who is directly responsible to the Inspectional Services Officer, Inspectional Services Bureau. The mission of the Intelligence Division is to gather, record, and provide the department with information on persons, groups, and organizations whose activities might be detrimental to local, state or national governments and to establish and maintain intelligence liaison with other governmental agencies. Additionally, the division shall process applications for detective agency licenses and commissions for special police officers. The specific functions of this division are organizationally divided among three branches as follows:

1. The Security Information Branch shall:

   a. Be responsible for the assimilation and dissemination of data on conspirator and demonstrator groups that threaten the security of national and local governments.

   b. Be responsible for collecting and disseminating to appropriate organizational elements, information on activities that require a police response.

   c. Be responsible for security information about organizations advocating violence or other unlawful activity.

   d. Be responsible for maintaining contact with appropriate personnel at embassies so that this department will be aware of any problems that could develop which would require police action.

2. The Organized Crime and Rackets Branch shall:

   a. Assimilate and disseminate information on organized crime.

   b. Collect current information on crime conditions that are susceptible to organization and syndicate control.

   c. Establish and maintain liaison with Federal agencies for the purpose of exchanging criminal intelligence information.

   d. Maintain an index of complaints against individuals involved in business frauds or organized criminal activity.

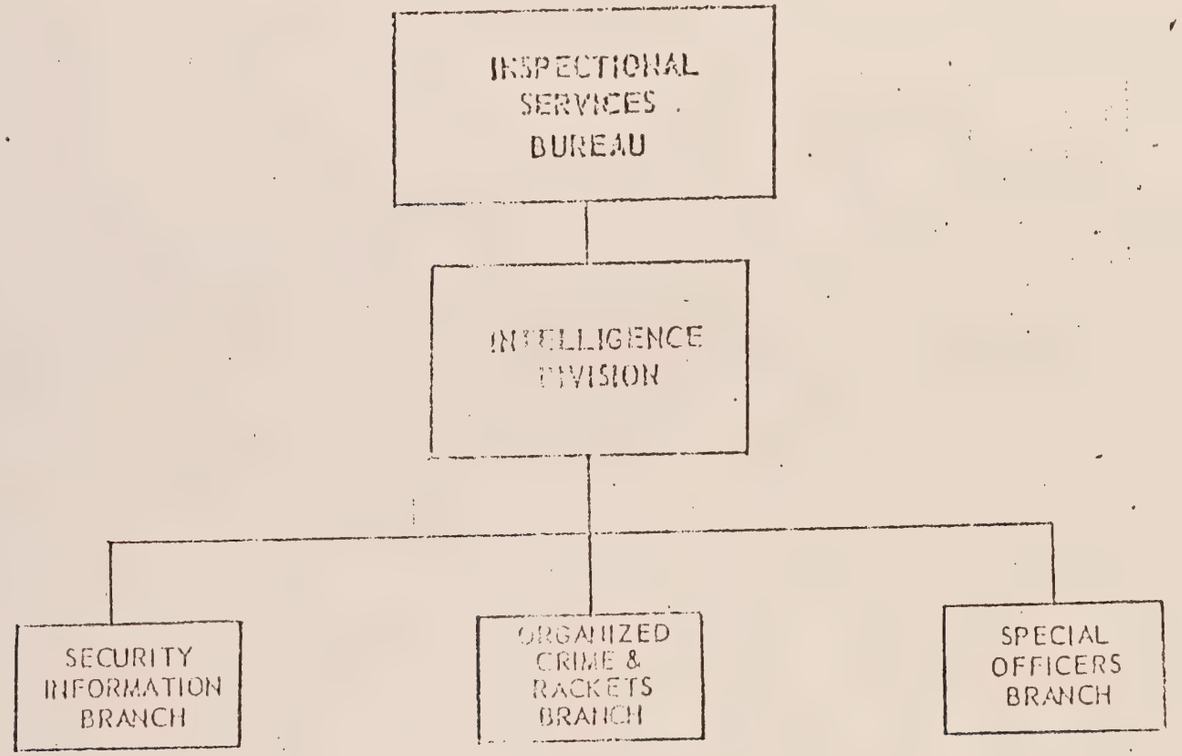
   e. Investigate allegations of fraudulent business practices.

3. The Special Officers Branch shall:

   a. Investigate applications for detective agency licenses and investigate and report on complaints against detective agencies.

   b. Process and investigate complaints against special policemen and security guards.

   c. Inspect special policemen and security guards on the job for conformance with standards of conduct and uniform regulations.


INSPECTIONAL SERVICES BUREAU
INTELLIGENCE DIVISION
SECURITY INFORMATION BRANCH
ORGANIZED CRIME & RACKETS BRANCH
SPECIAL OFFICERS BRANCH

C. The Special Officers Section shall:

1. Investigate applications for licenses of detective agencies.

2. Process, commission, and terminate special police and report on complaints against detective agencies.

3. Inspect Special Police on-the-job for conformance with standards of conduct and uniform regulation compliance.

F. ORGANIZATIONAL CHART

VI. MANNING TABLE

MANNING TABLE
INTELLIGENCE DIVISION

1 Inspector
1 Civilian

Security Information Section

1 Lieutenant
4 Sergeants
16 Investigators
2 Civilians

Organized Crime and Rackets Section

1 Lieutenant
2 Sergeants
4 Investigators

Special Officers Section

1 Sergeant
2 Investigators
1 Civilian

TOTAL:

Uniform	32
Civilian	4
	36

VII. ORDER RESCINDED

General Order Number 7-G-4, Series 1966.

VIII. EFFECTIVE DATE

This order is effective on the date of publication.

Jerry V. Wilson

Jerry V. Wilson
Chief of Police

DISTRIBUTION

EXHIBIT 3

GENERAL ORDER

SERIES	NUMBER	EFFECTIVE DATE
101	10	June 15, 1972

SUBJECT:

Organization of the Metropolitan Police Department

DISTRIBUTION: A

ORIGINATING UNIT: PDD

The purpose of this order is to further define the mission, organization, and functions of the Metropolitan Police Department as specified in Organization Order No. 153, dated November 10, 1966, which charges this department with the responsibility for providing maximum protection of life and property through the prevention and detection of crime; the enforcement of all local and locally applicable statutes, regulations, and ordinances; the application of the latest criminology techniques; the maintenance of an active police-community relations program; and cooperation with Federal police agencies in the enforcement of Federal laws. This order consists of the following parts:

PART I Office of the Chief of Police

PART II Office of the General Counsel

PART III Field Operations Bureau

PART IV Administrative Services Bureau

PART V Technical Services Bureau

PART VI Inspectional Services Bureau

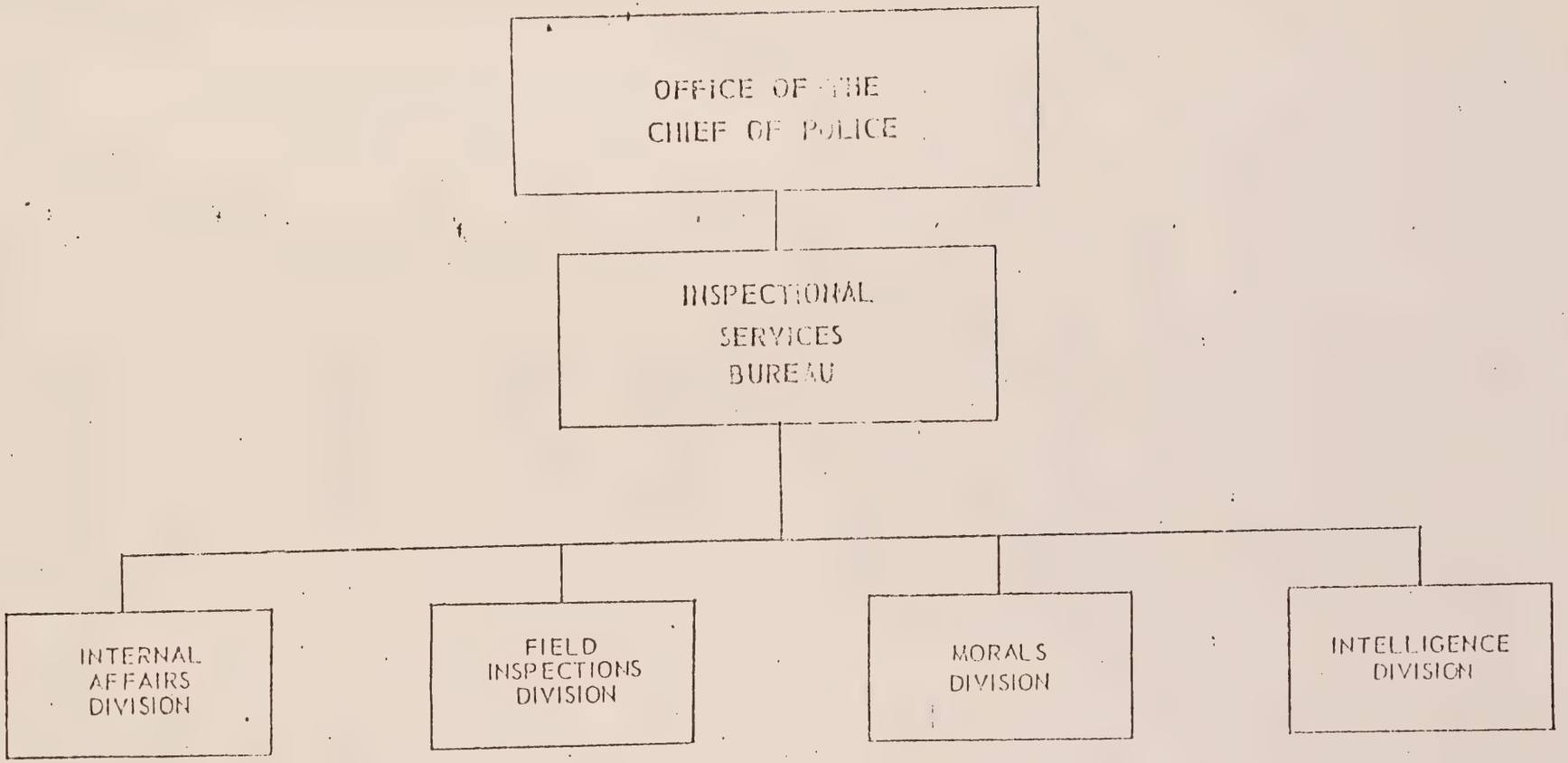
Jerry V. Wilson

Jerry V. Wilson
Chief of Police

PART VI

INSPECTIONAL SERVICES

BUREAU


OFFICE OF THE
CHIEF OF POLICE
INSPECTIONAL
SERVICES
BUREAU
INTERNAL
AFFAIRS
DIVISION
FIELD
INSPECTIONS
DIVISION
MORALS
DIVISION
INTELLIGENCE
DIVISION

In order to insure the effective operation of the department, the Inspectional Services Bureau centralizes staff functions related to the overall conduct and integrity of departmental personnel, the continuing inspection of organizational elements, the suppression of vice activites, and the timely provision of intelligence information. The Inspectional Services Bureau shall be commanded by the Inspectional Services Officer who is directly responsible to the Chief of Police. The Inspectional Services Officer shall provide the direction, control, and control necessary to insure the successful accomplishment of the [illegible] and functions of his bureau. The Inspectional Services Bureau shall consist of four divisions as follows:

A. Internal Affairs Division.

The Internal Affairs Division shall be commanded by a director who is directly responsible to the Inspectional Services Officer, Inspectional Services Bureau. The mission of the Internal Affairs Division is to provide staff supervision of all investigations involving department personnel; to provide the department with advice and investigative assistance on personnel problems concerning alleged violations of the law or infractions of disciplinary rules by members; and to conduct critical examinations, as directed by the Chief of Police, of all areas of police activity where conditions may threaten the integrity or morals of the department. The specific functions of this division are organizationally divided among four branches as follows:

1. The Complaint Investigation Branch shall:

   a. Investigate or provide staff supervision of the investigation of complaints made against any member or employee of the department.

   b. Investigate or provide staff supervision of the investigation of all formal complaints referred to it by the Commissioner of the District of Columbia or his authorized agents.

2. The Administrative Branch shall:

   a. Receive, file, and process complaints against departmental employees and prepare statistical summaries thereon.

   b. Maintain a central complaint log of internal investigations.

   c. Provide liaison with the Complaint Review Board.

   d. Provide clerical and administrative assistance to other elements of the division.

3. The General Investigation Branch shall:

   Conduct such investigations as may be initiated at the direction of the Chief of Police.

4. The Special Assignments Branch shall:

   a. Identify, monitor, and combat situations, including assignments that are conducive to facilitating corrupt practices.

   b. Conduct investigations of alleged corruption by members of the department, regardless of their duty assignment, to include attempts to corrupt members of the department.

INSPECTIONAL SERVICES BUREAU
INTERNAL AFFAIRS DIVISION
COMPLAINT INVESTIGATION BRANCH
ADMINISTRATIVE BRANCH
GENERAL INVESTIGATION BRANCH
SPECIAL ASSIGNMENTS BRANCH

B. Field Inspections Division.

The Field Inspections Division shall be commanded by a director who is directly responsible to the Inspectional Services Officer, Inspectional Services Bureau. The mission of the Field Inspections Division is to provide the department with inspectional services of personnel, material resources, and procedures to include open inspection on a continuing basis of every organizational element and every departmental task. The division shall also identify and describe organizational, administrative, managerial, economical, and operational deficiencies for the Chief of Police and bureau heads. Additionally, the Field Inspections Division shall operate and man the Prisoner Control Center during periods of civil disturbance and other emergencies as prescribed in General Order No. 801.1. The specific functions of this division are organizationally divided among three branches as follows:

1. The Procedure Evaluation Branch shall:

   a. Conduct regularly scheduled evaluations of procedures to insure that departmental policy is being followed and that directives are being uniformly interpreted and followed.

   b. Conduct regularly scheduled inspections of all organizational elements of the department and make a critical comparison between performance and written directives.

   c. Develop and administer a comprehensive safety program to govern the activities of the department.

2. The Material Resources Branch shall:

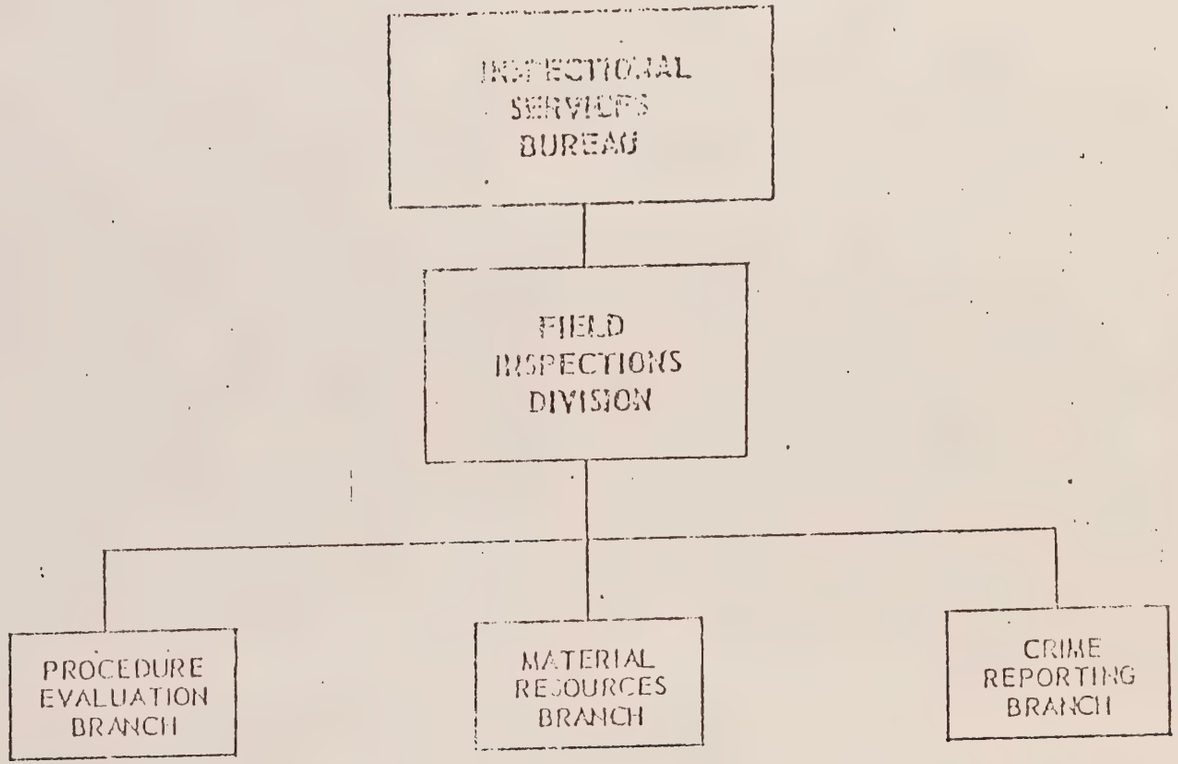
   Inspect all equipment and facilities used by the department to insure that they are properly used and maintained in a satisfactory condition and obtain data necessary for forecasting replacement needs.

3. The Crime Reporting Branch shall:

   a. Inspect the total crime reporting process including arrest and clearance procedures.

   b. Make frequent sample audits of the reports received and filed by the department.

c. Interview complainants to ascertain the quantity and quality of police service and the accuracy of reporting.


INSPECTIONAL SERVICES BUREAU
FIELD INSPECTIONS DIVISION
PROCEDURE EVALUATION BRANCH
MATERIAL RESOURCES BRANCH
CRIME REPORTING BRANCH

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS,
TO ALL FEDERAL DEFENDANTS

You are requested to admit that the person named Carlson in Exhibit 11 to the deposition of Donald Campbell would, if available at trial, testify as follows:

1. In the late 1960's and early 1970's I was a special employee, an informant, for the Metropolitan Police Department Intelligence Division.

2. I was the partner of Charles J. Marcum, aka Mike Marcum, an undercover officer assigned to the Intelligence Division.

3. Charles J. Marcum and I were directed by our superiors, Christopher Scrapper, Jack Acree and George Suter, to infiltrate anti-Vietnam War organizations holding offices at 1029 Vermont Avenue, N.W., Washington, D.C.

4. Our instructions from Scrapper, Acree, and Suter were

a. to seek leadership positions, or positions of trust and responsibility, in those organizations;

b. to influence the decisionmaking of those organizations in ways desired by the Intelligence Division; and

c. to learn and report to the Intelligence Division;

i. the names of the leaders, members or associates of the organizations,

ii. the organizations' plans and activities,

iii. the political ideas expressed and decisions made at private organizational meetings, and

iv. the political beliefs and nonpolitical personal activities of persons active in those organizations, including all individual plaintiffs,

d. to steal or destroy property of the organizations in order to disrupt their activities; and

e. to sow tension and distrust among persons active in the organizations, in order to diminish their effectiveness.

5. Charles J. Marcum and I, working together, carried out all these instructions over a period of several years.

6. During the time I worked for the Intelligence Division I never received any information that any plaintiff or any organization I infiltrated planned any violence at a demonstration or was involved in any way in any criminal activity.

7. In late 1969 or early 1970 defendants Scrapper, Acree, and Suter instructed Marcum and me to enter illegally in the night time an office at 1029 Vermont Avenue rented by an organization we had infiltrated, and to steal from a locked desk a locked metal box.

8. Scrapper, Acree, and Suter told us that the box contained information concerning the sources and uses of the organizations' funds, and that this information was desired by the FBI and the White House.

9. Marcum and I, working together, carried out these instructions and gave the metal box to Scrapper, Acree, and Suter.

10. Suter later told me he gave the contents of the box to FBI agent Gerald T. Grimaldi.

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J. E. McNeil

of Counsel:

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Plaintiffs' First Request for Admissions, to All Federal Defendants, was hand delivered this 26th day of October, 1981 to David H. White and Laura Bonn.

Daniel M. Schember

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

PLAINTIFFS' SECOND REQUEST FOR ADMISSIONS,
TO ALL DISTRICT OF COLUMBIA DEFENDANTS

You are requested to admit:

A. That the person named Carlson in Exhibit 11 to the deposition of Donald Campbell would, if available at trial, testify as follows:

1. In the late 1960's and early 1970's I was a special employee, an informant, for the Metropolitan Police Department Intelligence Division.

2. I was the partner of Charles J. Marcum, aka Mike Marcum, an undercover officer assigned to the Intelligence Division.

3. Charles J. Marcum and I were directed by our superiors, Christopher Scrapper, Jack Acree and George Suter, to infiltrate anti-Vietnam War organizations holding offices at 1029 Vermont Avenue, N.W., Washington, D.C.

4. Our instructions from Scrapper, Acree, and Suter were

a. to seek leadership positions, or positions of trust and responsibility, in those organizations;

b. to influence the decisionmaking of those organizations in ways desired by the Intelligence Division; and

c. to learn and report to the Intelligence Division;

i. the names of the leaders, members or associates of the organizations,

ii. the organizations' plans and activities,

iii. the political ideas expressed and decisions made at private organizational meetings, and

iv. the political beliefs and nonpolitical personal activities of persons active in those organizations, including all individual plaintiffs,

d. to steal or destroy property of the organizations in order to disrupt their activities; and

e. to sow tension and distrust among persons active in the organizations, in order to diminish their effectiveness.

5. Charles J. Marcum and I, working together, carried out all these instructions over a period of several years.

6. During the time I worked for the Intelligence Division I never received any information that any plaintiff or any organization I infiltrated planned any violence at a demonstration or was involved in any way in any criminal activity.

7. In late 1969 or early 1970 defendants Scrapper, Acree, and Suter instructed Marcum and me to enter illegally in the night time an office at 1029 Vermont Avenue rented by an organization we had infiltrated, and to steal from a locked desk a locked metal box.

8. Scrapper, Acree, and Suter told us that the box contained information concerning the sources and uses of the organizations' funds, and that this information was desired by the FBI and the White House.

9. Marcum and I, working together, carried out these instructions and gave the metal box to Scrapper, Acree, and Suter.

10. Suter later told me he gave the contents of the box to FBI agent Gerald T. Grimaldi.

B. That Jon (or Jan) Francis, named in Interrogatory 10 of plaintiffs' 8th set of interrogatories, would, if available at trial, testify as follows:

1. In the late 1960's and early 1970's I was an undercover officer of the Metropolitan Police Department generally assigned to the Special Operations Division, but on occasion specially assigned to work for the Intelligence Division.

2. My instructions from my superiors in Special Operations and Intelligence, the latter including defendants Scrapper, Acree, and Suter, were to act as agent provocateur at public antiwar and other political demonstrations held in Washington, D.C.

3. I carried out these instructions by attending numerous demonstrations, heckling speakers who advocated non-violence and urging demonstrators violently to confront police.

4. Defendants Scrapper, Acree, and Suter instructed me to attend a November 16, 1969 rally in Georgetown organized to protest construction of the proposed Three Sisters Bridge.

5. I attended the rally, heckled plaintiff Abbott for urging the gathering not to go to the site of the constructions, shouted to those present to go to the construction site to confront police, and led the gathering there.

6. At the construction site I incited the crowd to confront the police and shouted at the police, taunting them, and seeking to provike them to charge the crowd.

7. The police charged the crowd, beating and arresting those present, then sweeping into Georgetown, arresting and beating other persons, including those not involved in the demonstration.

C. That a former high ranking official of the Metropolitan Police Department who held the position of MPD liason to the Central Intelligence Agency, would, if available at trial, testify as follows:

1. I am a former high ranking official of the Metropolitan Police Department who held the position of MPD liason to the CIA.

2. During the course of my work I became familiar with the policies and procedures of the Intelligence Division and the contents of Intelligence Division files.

3. It was the policy and practice of the Intelligence Division to use undercover officers and informants designated special employees to gather information illegally from anti-Vietnam

War organizations, and organizations seeking social change or equality for women or minority groups by

a. instructing undercover officers and informants to steal membership and mailing lists, and other organization documents; and

b. placing electronic listening devices and transmitters, obtained from the CIA, in the homes of informants to monitor private meetings held there, whether the informant was present in the room or not.

4. The files of the Intelligence Division contained substantial amounts of information, on all organizations of a kind mentioned above, and individuals active in them, that had been gathered by these illegal means.

5. In 1974 or 1975 I participated with defendant Zanders, Zink, Ferguson, and other high-ranking MPD officials, in discussions concerning what to do with these files of illegally gathered information.

6. Divergent opinions were expressed during these discussions but the outcome was a decision to destroy the files because so much of the information in them had been illegally gathered.

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J. E. McNeil

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

1981

RECEIVED

JULIUS HOBSON, et al.,)
)
Plaintiffs,)
)
v.) Civil Action No. 76-1326
)
JERRY WILSON, et al.,)
)
Defendants.)

FILED
NOV 3 1981
JAMES F. DAVEY, CLERK

ORDER

This matter having come before the Court on plaintiffs' Motion to Compel Production of Documents Not Produced By Defendant District of Columbia, and it appearing that this motion should be granted, it is this 2d day of December, 1981

ORDERED, that defendant District of Columbia shall produce the index referred to in response 8 to plaintiffs' 13th set of interrogatories within 5 days of the date of this order.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUILUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

MOTION TO COMPEL PRODUCTION OF DOCUMENTS
NOT PRODUCED BY DEFENDANT DISTRICT OF COLUMBIA

Plaintiffs move the Court for an order compelling production of the index to 23 boxes of Intelligence Division documents referred to in Response 8 to plaintiffs' 13th set of interrogatories.

In support of this motion plaintiffs rely on the accompanying memorandum.

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Norway, Maine 02468
(207) 925-1144

J. E. McNeil

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL PRODUCTION OF DOCUMENTS
NOT PRODUCED BY DEFENDANT DISTRICT OF COLUMBIA

In plaintiffs' 3rd request for production of documents plaintiffs sought all documents pertaining to the 1975 police report to the mayor and city council concerning the operations of the Intelligence Division (the Cullinane Report). All documents pertaining to the interviews of former Intelligence Division officers, used to prepare the report, were sought, whether those documents were prepared before, during or after the interviews.

In response to this request for production of documents defendants produced documents previously assembled for production in IPS v. Mitchell. Inspection of these documents revealed that some of them were notes from oral or written interviews of former Intelligence Division officers, dating from the period just prior to the preparation of the Cullinane Report.

In plaintiffs' 13th set of interrogatories, plaintiffs sought the original location of the documents that had been assembled and produced on discovery in IPS v. Mitchell. Defendants responded:

> 23 boxes of the documents were kept at Suitland Record Center. At this time we have only a copy of the index concerning these documents. The documents were destroyed following a defeated motion to compel in 1978 before Judge Ribercomb.

Defendants' Response, filed October 14, 1981.

The index was fairly encompassed within plaintiffs' third document request and should be produced. There are witnesses available who inspected the 23 boxes of files prior to their destruction.

The index will be indispensable in refreshing the recollection of these witnesses.

Respectfully submitted,

Anne Pilsbury
17 Danforth Street
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(207) 925-1144

J. E. McNeil

Of Counsel:

Arthur Spitzer
Executive Director
American Civil Liberties
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

ORDER

This matter having come before the Court on plaintiffs' Motion to Compel Production of Documents Not Produced By Defendant District of Columbia, and it appearing that this motion should be granted, it is this _____ day of _____, 1981

ORDERED, that defendant District of Columbia shall produce the index referred to in response 8 to plaintiffs' 13th set of interrogatories within 5 days of the date of this order.

_____
UNITED STATES DISTRICT JUDGE

Certificate of Service

I certify that a copy of the foregoing Motion to Compel Production of Documents Not Produced by Defendant District of Columbia, accompanying memorandum, and proposed order, was personally served this 26th day of October, 1981 on David White and Laura Bonn.

Daniel M. Schember

RECEIVED OCT 1 8

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

REPLY MEMORANDUM IN SUPPORT OF MOTION BY FEDERAL DEFENDANTS FOR JUDGMENT ON THE PLEADINGS AND MOTION BY DEFENDANT GEROULD PANGBURN FOR JUDGMENT ON THE PLEADINGS

On September 16, 1981, the federal defendants moved for judgment on the pleadings, arguing that this action is barred by the applicable statute of limitations. On the same date, fifteen of the defendants within the group collectively referred to as the "federal defendants" moved for judgment on the pleadings on grounds that plaintiffs have failed to state a claim against them upon which relief can be granted.

By memorandum filed on October 5, 1981, plaintiffs opposed only two of the several motions filed by the federal defendants, viz., (1) the motion by all federal defendants arguing that the action is barred by the applicable statute of limitations, and (2) the individual motion by defendant Gerould Pangburn in which he argues that plaintiffs fail to state a claim against him upon which relief can be granted. Plaintiffs also affirmatively expressed a desire that their claims against fifteen of the federal defendants be dismissed;*/ consequently, they intend to proceed with this action for damages against only defendants Charles Brennan, George Moore, Gerald Grimaldi, Courtland Jones,**/ and

*/ See plaintiffs' Motion For Leave For Voluntary Dismissal of Certain Federal Defendants, filed October 5, 1981.

**/ Defendant Courtland Jones moved to dismiss on August 20, 1981. That motion is pending.

Gerould Pangburn.*/ In addition, plaintiffs are proceeding against William H. Webster in his capacity as Director of the Federal Bureau of Investigation.

This memorandum responds to plaintiffs' arguments insofar as they relate to the issue of the statute of limitations and to defendant Pangburn's motion for judgment on the pleadings.

I. The Action Is Barred By The Applicable Statute of Limitations

Plaintiffs make two arguments in contending that this action is not barred by the applicable statute of limitations: (1) that there is no limitations period governing suits against federal officers for alleged constitutional torts, and (2) that if there is a limitations period, its running was tolled by the equitable doctrine of fraudulent concealment until April, 1976.

Plaintiffs' first argument is interesting but enjoys no juridical support. The law of this case is that the limitations period is no longer than three years, as established by 12 D.C. Code § 301(8). See Memorandum and Order, November 9, 1979, (per Pratt, J.). In addition, this Circuit has recognized that in actions against federal officers for alleged violation of constitutional rights, for which there is no federal statute of limitations, the analogous local limitations period is adopted. Fitzgerald v. Seamans, 553 F.2d 220 (D.C. Cir. 1977); Smith v. Nixon, 606 F.2d 1183 (D.C. Cir. 1979); Church of Scientology of California v. Foley, 640 F.2d 1335 (D.C. Cir. 1981); see also Saffron v. Wilson, 481 F. Supp. 228 (D.D.C. 1979). In no instance has any court suggested that there was no limitations period.

In support of their contention, plaintiffs rely on Carlson v. Green, 446 U.S. 14 (1980), which held that a uniform federal rule of survivorship would be applied to actions against federal

*/ The Amended Complaint names as defendants thirty-nine present and former agents of the Federal Bureau of Investigation. Of these thirty-nine, five are deceased, nine have never been served with the summons and complaint, five were dismissed prior to September 16, 1981, and fifteen are subject to dismissal by plaintiffs' motion. There are also several defendants associated with the Metropolitan Police Department whose status is not affected by these pending motions.

officers for alleged constitutional deprivations. The Court found that application of state rules of survivorship would in some instances frustrate achievement of the goals of Bivens actions in that such actions could in certain states be barred. 446 U.S. at 25. Application of state rules of limitations of actions to Bivens actions does not frustrate the achievement of the goals of such actions. See, Johnson v. Railway Express Agency, 421 U.S. 454 (1975); Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 702 (1966). Although the limitations periods may differ from state to state, in no case would the right of action be denied, and the lack of absolute uniformity does not interfere with the goals of Bivens actions to recompense injured persons and to deter federal officers from committing unconstitutional acts. See Auto Workers, supra, 383 U.S. at 702. Moreover, the goals and purposes of statutes of limitations, as statutes of repose and to prevent stale claims, are not insignificant, and plaintiffs advance no reasons to justify why in Bivens actions these principles should be ignored.

Plaintiffs' second argument is that until April, 1976, when certain Senate committee reports were published, information sufficient to put them on notice that they had a cause of action had been fraudulently concealed from them. This contention suffers from two fundamental fallacies: (1) plaintiffs have not alleged or proved that any defendant fraudulently concealed a potential cause of action, and (2) the record of this action, including principally the testimony of the plaintiffs, demonstrates that by the Spring of 1972 plaintiffs had sufficient information to put them on notice of a potential cause of action.

The Amended Complaint, as well as the factual elucidation supplied by plaintiffs, demonstrates that this action was commenced more than three years after the events alleged to have caused injury. To avoid the time bar, therefore, plaintiffs must establish that the statute was tolled by the equitable principle of fraudulent concealment. Plaintiffs must prove that the defendants Brennan, Moore, Jones, Grimaldi, and Pangburn either had

a duty to disclose information to them or had taken affirmative action to conceal facts which, if known, would have alerted plaintiffs that a cause of action existed. Mere silence is not sufficient to toll the statute. Smith v. Nixon, 606 F.2d 1183 (D.C. Cir. 1979); General Aircraft Corp. v. Air America, Inc., 482 F. Supp. 3, 8 (D.D.C. 1979). Plaintiffs have not alleged or proved that these defendants had a duty to disclose or took affirmative acts to conceal.

Moreover, fraudulent concealment will toll the statute only so long as the concealment endures. Where the plaintiffs knew, or by the exercise of due diligence could have known, that they may have had a cause of action, the statute of limitation is not tolled. Fitzgerald v. Seamans, 384 F. Supp. 688 (D.D.C. 1974), affirmed, 553 F.2d 220 (D.C. Cir. 1977).

The exhibits attached to the motion by federal defendants for judgment on the pleadings and the testimony of plaintiffs demonstrate that by the Spring of 1972, more than four years prior to commencement of this action, plaintiffs had information, principally through the disclosures by former Special Agent Robert Wall, which alerted them to the existence of a potential cause of action. [See Memorandum In Support of Federal Defendants Motion For Judgment on the Pleadings, at 5-7]. Plaintiffs assert now that this information, including their personal observations, experiences, and suspicions, was not sufficient to file suit.*/ [See Plaintiffs' Opposition To Motions By Defendants, filed October 5, 1981, at 20]. It is of no moment, however, that plaintiffs lacked in 1972 the precise details to prove their claims. As the Court stated in Fitzgerald v. Seamans, 384 F. Supp. 688 (D.D.C. 1974):

> It would be anomalous indeed if under the modern Federal Rules of Civil Procedure, which provide for notice pleadings and liberal opportunities for discovery, a plaintiff could succeed in a claim of fraudulent concealment merely by alleging that the full "depth and scope of the conspiracy remained hidden" from him and "has not even to this day become fully known." [Citations omitted.]

*/ This assertion is made even though a component of the National Mobilization Committee in fact brought suit in 1970. See Fifth Avenue Peace Parade Committee v. Gray, 480 F.2d 326 (2nd Cir. 1973).

384 F. Supp. at 694. The plaintiffs clearly had information in 1972 which was sufficient to impose on them the duty to exercise due diligence to find the necessary facts for intelligent prosecution of their claims. The period of limitations, arguably three years, is for the purpose of making such an inquiry, which could have been done, for example, by demands pursuant to the Freedom of Information Act, review of materials produced in other suits, personal interviews, or, as in this case, filing a complaint alleging a general cause of action and then sifting through massive discovery in an attempt to locate a cognizable claim. Plaintiffs have not demonstrated that by the exercise of due diligence they could not have discovered sufficient facts.

Plaintiffs' present claim that they did not have sufficient information until April, 1976, rings hollow. The claim suggests that the activities of the FBI were completely unknown and the revelations of the Church Committee sprang upon a complacent, unsuspecting public. Nothing could be further from the truth, as is demonstrated by, among other things, the large number of civil actions filed against the FBI prior to April, 1976.*/ Furthermore, it would seem that if the Church Commitee had been such an abundant source of information to the plaintiffs, they would have been able to formulate a complaint which did more than name defendants at random and made only general, categorical allegations. The record amply demonstrates that plaintiffs rested comfortably on their cause of action and filed their complaint after their claims were time barred.

II. Defendant Gerould Pangburn Is Entitled To Judgment on the Pleadings

Defendant Pangburn's motion for judgment on the pleadings is based essentially on these issues: (1) Plaintiffs fail, in the Amended Complaint and in their responses to discovery, to set

*/ E.g., Institute for Policy Studies v. John Mitchell, (D.D.C.) Civil Action No. 74-316; David Dellinger v. John Mitchell, (D.D.C.) Civil Action No. 1768-69; Jane Fonda v. Richard Nixon, (N.D. Cal.) Civil Action No. 73-2442; SWP v. Attorney General, (S.D.N.Y.) Civil Action No. 73-Civ-1360; ACLU v. City of Chicago, (N.D. Ill.) Civil Action No. 75-3295.

forth with particularity the nature of their claim against defendant Pangburn; (2) Plaintiffs fail to describe any act committed by defendant Pangburn which caused them injury or to link him with any misconduct; (3) Defendant Pangburn'Ps sworn testimony refutes the allegations of misconduct.

Plaintiffs' opposition to this motion contains eighteen pages of diatribe against the FBI; however, defendant Pangburn is not mentioned by name or by position. Not one act or event is described with which defendant Pangburn is alleged to have been connected.*/ Not one issue raised in defendant Pangburn's motion is addressed. In short, plaintiffs have not opposed defendant Pangburn's motion; he is therefore entitled to judgment in his favor.

Respectfully submitted,

J. PAUL McGRATH
Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge/DHW
BROOK HEDGE

David H. White
DAVID H. WHITE

Attorneys, Department of Justice
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Washington, D.C. 20530
Telephone: (202) 633-4269

Attorneys for federal defendants

*/ On the same date that plaintiffs filed their opposition to defendant Pangburn's motion, they abandoned their claims against fifteen other defendants. [See Plaintiffs' Motion For Leave To Voluntarily Dismiss Certain Federal Defendants, filed October 5, 1981.] Their opposition, however, reveals no distinction between defendant Pangburn and these fifteen against whom plaintiffs have elected not to proceed.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing Reply Memorandum In Support of Motion By Federal Defendants For Judgment on the Pleadings and Motion By Defendant Gerould Pangburn For Judgment on the Pleadings.

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Laura Bonn, Esquire
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Daniel Schember, Esquire
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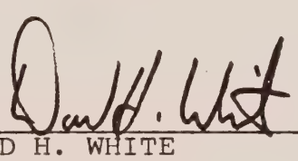

DAVID H. WHITE
Attorney, Department of Justice
Washington, D.C. 20530

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	:	
Plaintiffs	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et al	:	
Defendants	:	

PLAINTIFFS' SECOND REQUEST FOR ADMISSIONS,
TO ALL DISTRICT OF COLUMBIA DEFENDANTS

You are requested to admit:

A. That the person named Carlson in Exhibit 11 to the deposition of Donald Campbell would, if available at trial, testify as follows:

1. In the late 1960's and early 1970's I was a special employee, an informant, for the Metropolitan Police Department Intelligence Division.

2. I was the partner of Charles J. Marcum, aka Mike Marcum, an undercover officer assigned to the Intelligence Division.

3. Charles J. Marcum and I were directed by our Superiors, Christopher Scrapper, Jack Acree and George Suter, to infiltrate anti-Vietnam War organizations holding offices at 1029 Vermont Avenue, N.W., Washington, D.C.

4. Our instructions from Scrapper, Acree, and Suter were:

a. to seek leadership positions, or positions of trust and responsibility, in those organizations;

b. to influence the decisionmaking of those organizations in ways desired by the Intelligence Division; and

c. to learn and report to the Intelligence Division;

i. the names of the leaders, members or associates of the organizations,

ii. the organizations' plans and activities,

iii. the political ideas expressed and decisions made at private organizational meetings, and

iv. the political beliefs and nonpolitical personal activities of persons active in those organizations, including all individual plaintiffs,

d. to steal or destroy property of the organizations in order to disrupt their activities; and

e. to sow tension and distrust among persons active in the organizations, in order to diminish their effectiveness.

5. Charles J. Marcum and I, working together, carried out all these instructions over a period of several years.

6. During the time I worked for the Intelligence Division I never received any information that any plaintiff or any organization I infiltrated planned any violence at a demonstration or was involved in any way in any criminal activity.

7. In late 1969 or early 1970 defendants Scrapper, Acree, and Suter instructed Marcum and me to enter illegally in the night time an office at 1029 Vermont Avenue rented by an organization we had infiltrated, and to steal from a locked desk a locked metal box.

8. Scrapper, Acree, and Suter told us that the box contained information concerning the sources and uses of the organizations' funds, and that this information was desired by the FBI and the White House.

9. Marcum and I, working together, carried out these instructions and gave the metal box to Scrapper, Acree, and Suter.

10. Suter later told me he gave the contents of the box to FBI agent Gerald T. Grimaldi.

ANS. Objection on the grounds of the law enforcement priviledge and on the grounds that it is impossible to admit or deny the truth of a future event, such as how an individual will testify at trial. In other words, the plaintiffs have not asked us to deny a fact; rather they have asked us to predict the future testimony of a person we do not represent. Thus, the request for admission is not proper discovery and cannot be answered.

B. That Jon (or Jan) Francis, named in Interrogatory 10 of plaintiffs' 8th set of Interrogatories, would, if available at trial, testify as follows:

1. In the late 1960's and early 1970's I was an undercover officer of the Metropolitan Police Department generally assigned to the Special Operations Division, but on occasion specially assigned to work for the Intelligence Division.

2. My instructions from my superiors in Special Operations and Intelligence, the latter including defendants Scrapper, Acree, and Suter, were to act as agent provocateur at public antiwar and other political demonstrations held in Washington, D.C.

3. I carried out these instructions by attending numerous demonstrations, heckling speakers who advocated nonviolence and urging demonstrators violently to confront police.

4. Defendants Scrapper, Acree, and Suter instructed me to attend a November 16, 1969 rally in Georgetown organized to protest construction of the proposed Three Sisters Bridge.

5. I attended the rally, heckled plaintiff Abbott for urging the gathering not to go to the construction site to confront police, and led the gathering there.

6. At the construction site I incited the crowd to confront the police and shouted at the police, taunting them, and seeking to provoke them to charge the crowd.

7. The police charged the crowd, beating and arresting those present, then sweeping into Georgetown, arresting and beating other persons, including those not involved in the

demonstration.

ANS. Objection on the grounds of the law enforcement priviledge and on the grounds that it is impossible to admit or deny the truth of a future event, such as how an individual will testify at trial. In other words, the plaintiffs have not asked us to deny a fact; rather they have asked us to predict the future testimony of a person we not represent. Thus, the request for admission is not proper discovery and cannot be answered.

C. That a former high ranking official of the Metropolitan Police Department who held the position of MPD liason to the Central Intelligence Agency, would, if available at trial, testify as follows:

1. I am a former high ranking official of the Metropolitan Police Department who held the position of MPD liason to the CIA.

2. During the course of my work I became familiar with the policies and procedures of the Intelligence Division and the contents of Intelligence Division files.

3. It was the policy and practice of the Intelligence Division to use undercover officers and informants designated special employees to gather information illegally from anti-Vietnam War organizations, and organizations seeking social change or equality for women or minority groups by

a. instructing undercover officers and informants to steal membership and mailing lists, and other organization documents; and

b. placing electronic listening devices and transmitters, obtained from the CIA, in the CIA, in the homes of informants to monitor pirvate meetings held there, whether the informants was present in the room or not.

4. The files of the Intelligence Division contained substanial amounts of information, on all organizations of a kind mentioned above, and individuals active in them, that had been gathered by these illegal means.

5. In 1974 or 1975 I participated with defendant Zanders, Zink, Ferguson, and other high-ranking MPD officials, in discussions concerning what to do with these filed of illegally gathered information.

6. Divergent opinions were expressed during these discussions but the outcome was a dicision to destroy the files because so much of the information in them had been illegally gathered.

ANS. Objection on the grounds that plaintiffs have not identified the person this admission refers to, making it impossible to admit or deny a fact on behalf, also, plaintiffs have not asked us to deny a fact; rather they have asked us to predict the future testimony of a person we don't know the identity of, or whether we represent the person. Thus, the request for admission is not proper discovery and cannot be answered.

JUDITH W. ROGERS
Corporation Counsel, D.C.

JOHN H. SUDA
Deputy Corporation Counsel, D.C.

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George N. Barclay (248849)
Assistant Corporation Counsel, D.C.
Attorneys for District of Columbia
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727-6303

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Responses of District of Columbia Defendants to Plaintiffs Request For Admissions was mailed, postage prepaid, to Daniel Schember, Esq., 1712 N Street, N.W., Washington, D.C., and Herb Semmel, Esq., 1624 Crescent Place, N.W., Washington, D.C., 20009, and David White, Attorney for the Department of Justice, Washington, D.C., 20530, this _____ day of November, 1981.

Assistant Corporation Counsel, D.C.
Attorney for District of Columbia
District Building
Washington, D.C. 20004

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,
Plaintiffs,

v.

JERRY WILSON, et al.,
Defendants.

Civil Action No. 76-1326

FILED
NOV 3 1981
JAMES F. DAVEY, CLERK

ORDER

Upon consideration of plaintiffs' motion for leave to file pre-trial brief one day out of time, and it appearing that such motion should be granted, it is this 2d day of November, 1981

ORDERED that leave to file pre-trial brief out of time is granted nunc pro tunc.
f 30

Louis F. Oberdorfer
JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED NOV

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

FILED
NOV 3 1981
JAMES F. DAVEY, CLERK

ORDER

This cause having come before the Court on motion by the federal defendants for enlargement of time within which to file their pre-trial brief, and the Court being fully advised in the premises, it is this 2d day of November, 1981,

ORDERED that the motion be, and hereby is, GRANTED, and federal defendants shall have to and including November 5, 1981, within which to file their pre-trial brief.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

6

RECEIVED OCT 30 [illegible]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

FILED
OCT 29 1981
JAMES E. DAVEY, CLERK

ORDER

This matter having come before the court on plaintiffs' Motion for Expedited Response to Requests for Admission, and it appearing that this motion should be granted, it is this 29th day of October, 1981

ORDERED that defendants shall respond to plaintiffs' first and second requests for admissions simultaneously with service of defendants' pre-trial briefs.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

(N)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RECEIVED NOV 5 1981

JULIUS HOBSON, et al. :

Plaintiffs :

v. : Civil Action No. 76-1326

JERRY WILSON, et al. :

Defendants :

FILED
NOV 5 1981
JAMES F. DAVEY, CLERK

ORDER

This matter is before the Court on the motion of the District of Columbia defendants for an extension of time within which to respond to plaintiffs' pre-trial brief up to and including November 3, 1981. Upon consideration of the motion, the memorandum of points and authorities filed in support thereof and the entire record herein, it is, by the Court this 2d day of November, 1981,

ORDERED: That the motion of District of Columbia defendants for an extension of time be, and the same is, hereby granted; and, it is,

FURTHER ORDERED: That the District of Columbia defendants have up to and including November 3, 1981, to respond to plaintiffs' pre-trial brief.

Louis F. Oberdorfer
UNITED STATES DISTRICT COURT
JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

MOTION FOR LEAVE TO FILE MEMORANDUM IN RESPONSE TO ORDER DATED OCTOBER 29, 1981 ONE DAY OUT OF TIME

Plaintiffs respectfully move this Court for leave to file one day out of time their memorandum in response to this Court's order dated October 29, 1981. In support of this motion they rely on the attached memorandum.

Respectfully submitted,

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(207) 925-1144

J. E. McNeil

Of Counsel:

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Executive Director
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Union Fund of the
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(202) 265-9500

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO FILE MEMORANDUM
IN RESPONSE TO ORDER DATED
OCTOBER 29, 1981 ONE DAY OUT OF TIME

In support of their motion for leave to file their memorandum in response to this Court's order dated October 29, 1981 out of time, plaintiffs state the following:

Plaintiffs' counsel began work on their response immediately, interrupting their work only for other necessary trial preparation and pressing needs of other clients. All of the time that was provided by the Court was needed. The day of filing counsel's secretary was forced by personal problems to leave the office almost immediately after arriving. Although counsel obtained another typist, it was some hours before she was able to arrive.

Respectfully submitted,

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Of Counsel:

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Herb Semmel

Herb Semmel
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(202) 265-9500

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

ORDER

Upon consideration of plaintiffs' motion for leave to file memorandum in response to order dated October 29, 1981 one day out of time, and it appearing that such motion should be granted, it is this _____day of _____, 1981

ORDERED tha leave to file memorandum in response to order dated October 29, 1981 is granted.

_____
JUDGE

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion for leave to file memorandum in response to order dated October 29, 1981 one day out of time, memorandum in support, and proposed order to David White, Department of Justice, Washington, D.C. 200530 and Laura Bonn, Assistant Corporation Counsel, District Building, 14th and E Streets, N.W. Washington, D.C. 20004 this 6th day of October, 1981.

Daniel M. Schember

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

MOTION BY FEDERAL DEFENDANTS FOR LEAVE TO FILE PRETRIAL BRIEF OUT OF TIME

The federal defendants, through undersigned counsel and pursuant to Rule 6 of the Federal Rules of Civil Procedure, move for leave to file their pretrial brief one day out of time. This Court has previously granted federal defendants an enlargement of time to and including November 5, 1981, to file their pretrial brief. They were unable to complete the brief by that date and now respectfully request an additional one day enlargement.

Respectfully submitted,

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Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge /DHW
BROOK HEDGE

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Attorneys for federal defendants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

This matter having come before the Court on motion by the federal defendants for leave to file their pretrial brief one day out of time, and the Court being fully advised in the premises, it is this _____ day of November, 1981,

ORDERED that the motion for leave to file the pretrial brief be, and hereby is, granted.

_____
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing Motion By Federal Defendants For Leave To File Their Pretrial Brief Out Of Time, and proposed Order.

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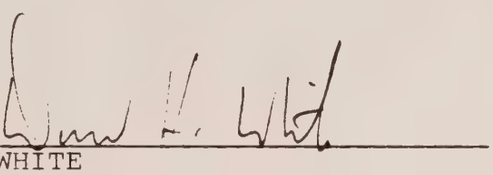

DAVID H. WHITE
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Oct. 1981-
Nov. 1981

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

FINAL PRETRIAL ORDER

I.

Jury Selection and Trial Scheduling

The Jury Commission has been requested to provide a panel of 75 potential jurors. Six jurors and six alternates will be seated. The Court will advise the panel that they will be expected to sit for 18 trial days, Monday through Friday, from 9:30 a.m. to 5:00 p.m., unless otherwise ordered for good cause shown.

The plaintiffs have submitted two witness lists, the initial one with 168 names, and a later substitute submitted November 17 with 99 names. Defendants have filed briefer lists.

The parties shall confine the number of witnesses called to those who can be heard within the following time frame: the Court has allocated 18 trial days (five and one-half hours per day) or 99 courtroom hours to this case. Jury selection, instructions and arguments should not require more than ten courtroom hours. Plaintiffs will therefore have available about 44 courtroom hours in which to adduce affirmative and rebuttal evidence; defendants will also have 44 hours in which to adduce their defense evidence. Cross-examination of each witness shall not exceed the time required for direct examination of that witness, except by leave of Court for good cause shown.

The Court will conduct voir dire on the record, in open court, selecting from questions suggested by counsel as well as propounding questions that occur to the Court. Voir dire examinations at the bench will be the exception, as, for example, when necessary to protect the privacy of a potential juror.

The federal defendants will be allowed two peremptory challenges in the selection of jurors and one such challenge in the selection of alternates, and the District of Columbia defendants will be allowed the same number of challenges as the federal defendants; the federal and District of Columbia defendants may pool their challenges. The plaintiffs will be allowed four peremptory challenges for jurors and two peremptory challenges for alternate jurors. The peremptory challenges will be effected by counsel by manually striking particular names from a list of panel members to be furnished to counsel by the Deputy Clerk at the beginning of the jury selection process. After the six jurors are seated, the deputy will return the list to counsel for repetition of the striking process and selection of the six alternates. Some details:

Counsel may, but are not required to, rise when the jury enters or leaves the courtroom.

It will speed proceedings if counsel will arrange to have the next witness seated outside the courtroom as the time for that witness' testimony approaches.

For argument and proof, plaintiffs will open; both defendants may respond or rebut seriatim, after which plaintiffs may close.

Parties shall maintain custody of exhibits until conclusion of the trial. Such exhibits as have been admitted into evidence shall be received by the Deputy Clerk during the jury deliberations and returned to the parties after the verdict.

II.

Issues

1. Whether a particular act of a defendant or particular acts of defendants jointly or as alleged co-conspirators prevented or proximately ~~caused~~ a particular plaintiff on one or more particular occasions ~~to forbear~~ from exercising rights guaranteed by the First Amendment:

a. To write

b. To speak

c. To assemble (for a "First Amendment purpose") at a particular time and place

d. To associate (for a "First Amendment purpose") with one or more other particular persons

2. Whether particular defendants were engaged in one or more conspiracies to deprive plaintiffs of First Amendment rights described in II.1 above.

3. Whether one or more defendants, individually or through a conspiracy, fraudulently or deliberately concealed from a particular plaintiff knowledge of facts necessary intelligently to prosecute that plaintiff's right of action, which facts plaintiff could not have discovered within the period open under the statute of limitations by the exercise of due diligence.

4. Whether, with respect to each action by each defendant complained of by a plaintiff, a reasonable person in that defendant's situation could believe in good faith that the action taken would not impede a person in plaintiff's position in the exercise of one or more First Amendment rights described in II.1 above, e.g. whether the defendant's action was to aid an actual or potential criminal investigation or to anticipate with intelligence situations which would require police action to control or counter unlawful domestic disturbances.

statute of limitations would apply to plaintiffs' claims, see D.C. Code § 301(8), the action should not be dismissed, because plaintiffs had suggested that defendants had fraudulently concealed information that would have made them aware of their rights of action during the three-year period after time began to run on their rights. Without making specific findings about those allegations of fraudulent concealment, the Court indicated that plaintiffs might well have lacked the "material facts" necessary for "intelligent prosecution" of their rights. See Emmet v. Eastern Dispensary & Casualty Hospital, supra, 130 U.S. App. D.C. 50, 56, 396 F.2d 931, 937; Hobson v. Wilson, supra, slip op. at 6. The Court stated, however, that defendants should have an opportunity to renew their motion for judgment on the pleadings later in the litigation if it subsequently appeared that plaintiffs had failed to prosecute their action without good cause.

In support of their present motion based on the statute of limitations, defendants argue that it is the law of this case that the longest statute of limitations applicable to the action is the three-year period established by 12 D.C. Code § 301(8). Defendants assert that because the complaint (later amended) that commenced this action was filed on July 16, 1976, and because no act is specifically alleged to have occurred after that date, the case should be dismissed. Plaintiffs, in their opposition to the defendants' motion, appear to concede that they allege no act giving rise to a cause of action after July 16, 1973. They argue, however, that the three-year statute of limitations should not apply to their constitutional cause of action against defendants, and that even if it did apply, the defendants concealed material facts that would have enabled them earlier to commence the action. Plaintiffs thus ask the Court to revise the decision of November 9, 1979, concerning the applicability of the statute of limitations and, in the alternative, to invoke the equitable doctrine of fraudulent or deliberate concealment. The developments in the law governing use of local procedure rules in direct constitutional actions since this Court's decision in November 1979, perhaps highlighted by Carlson v. Green, 446 U.S. 14

(1980), do not, however, permit the Court to reconsider the 1979 decision that 12 D.C. Code § 301(8) applies to this case. Certainly, Carlson v. Green is not itself authority, as plaintiffs argue, for avoiding local statutes of limitation in direct constitutional actions. The issue thus becomes whether the Court should, upon examination of the present record, find that plaintiffs are entitled to the benefit of the equitable doctrine the Court applied pro tempore in November 1979.

Plaintiffs bear the burden of proving their right to toll the statute of limitations because of alleged fraudulent or deliberate concealment. Emmett v. Eastern Dispensary & Casualty Hospital, supra, 130 U.S. App. D.C. at 56-57, 396 F.2d at 938-39. Our Court of Appeals has established principles governing the application of that doctrine to public actions involving allegations of covert official wrongdoing. See, e.g., Smith v. Nixon, 196 U.S. App. D.C. 276, 606 F.2d 1183 (1979); Fitzgerald v. Seamans, 180 U.S. App. D.C. 75, 553 F.2d 220 (1977). It is unclear from the record in this case whether Judge Pratt's November 1979 ruling on the motion to dismiss dealt with the depositions of plaintiffs Tina Hobson and David Eaton concerning their knowledge of official misconduct directed at them during the 1960's and 1970's. See Eaton deposition at 14-15 (filed Dec. 12, 1978); T. Hobson deposition at 9-11 (filed Jan. 17, 1979). Similarly, it is unclear whether Judge Pratt had before him in 1979 the magazine and newspaper articles the government now offers as evidence that plaintiffs might, through "due diligence," see Fitzgerald v. Seamans, supra, 180 U.S. App. D.C. at 83, 553 F.2d at 228, have discovered the facts that could have been the basis of a claim well before the statute had run. Even if this Court should deem all those materials to have been before the Court in November 1979, however, it is clear that Judge Pratt did intend his decision to preclude a motion to dismiss turning on the applicability of the doctrine of fraudulent or deliberate concealment, after fuller development of the facts and issues in pretrial proceedings. See Hobson v. Wilson, supra, slip op. at 6.

Pretrial is now virtually complete. The eve of trial is the appropriate moment in this case to resolve the facts on the fraudulent concealment question. See Fitzgerald v. Seamans, supra, 180 U.S. App. D.C. at 84, 553 F.2d at 229. While plaintiffs must prove their entitlement to equitable relief from the statute of limitations, the decision in Fitzgerald v. Seamans, supra, appears to contemplate an opportunity for the taking of evidence on the issues of "due diligence" and prior knowledge of a right of action before summary judgment, or judgment on the pleadings, could be granted in a case like the present one. See id.; see also Smith v. Nixon, supra, 196 U.S. App. D.C. at 283, 606 F.2d at 1190. This Court cannot say that the plaintiffs have now proven an entitlement to relief from the statute of limitations; but similarly, there remain material questions about the ability of plaintiffs to have commenced action prior to the issuance of the report of the Ninety-Fourth Congress' Senate Select Committee To Study Governmental Operations With Respect To Intelligence Activities in 1976. While the references to the Hobson and Eaton depositions raise unresolved questions about plaintiffs' knowledge of their rights of action, plaintiffs must have adequate opportunity to carry the burden that the doctrine of fraudulent or deliberate concealment imposes on them.

An accompanying order therefore directs the parties to file papers to assist the Court in determining whether it can, on the basis of the present record, reach and decide the issues raised by plaintiffs' claim of fraudulent or deliberate concealment, particularly in light of Fitzgerald v. Seamans, supra, 180 U.S. App. D.C. at 84, 553 F.2d at 229. In addition to assembling all the present evidence pertinent to plaintiffs' claim, the papers should discuss whether the knowledge plaintiffs did have of official misconduct bars some, if not all, of their substantive claims, and whether that knowledge placed them under an obligation to investigate sua sponte what they knew, or suspected, about government interference with their activities. See Smith v. Nixon, supra, 196 U.S. App. D.C. at 284, 606 F.2d at 1191. The parties should also discuss whether a plaintiff's

knowledge, or the obligations of "due diligence" attributable to one plaintiff, should affect the entitlement of other plaintiffs to go forward even if the knowledgeable plaintiff must be dismissed from the action. Moreover, the parties should address the difficult questions raised if it appears that the plaintiffs had some knowledge of wrongdoing, but no knowledge of the particular individuals, or specific governmental organizations that were responsible for it. See Fitzgerald v. Seamans, supra. Finally, the parties should discuss whether, if the present record does not permit resolution of this matter, the remaining factual issues deriving from the claim of fraudulent or deliberate concealment should be determined by the Court or by a jury. In the event factual questions remain, the Court will wish to try them before or as the first phase of trial on the merits, either to the Court or to a jury. The briefing schedule established by the accompanying Order will permit the Court to examine plaintiffs' claim to the benefit of the doctrine of fraudulent or deliberate concealment at the time of the pretrial conference.

The discrete defenses raised by defendants Jones and Pangburn are more simply resolved. Neither defendant is entitled to dismissal of the complaint as to him for failure to state adequately the claim against him. Such a defense has already been considered and rejected by the Court in its November 1979 decision. See Hobson v. Wilson, supra, slip op. at 3-4. Jones' suggestion that the claims against him should be dismissed for failure to serve process in a timely fashion must also be rejected, inasmuch as he will suffer no prejudice if plaintiffs are precluded from raising any claim against him not stemming from acts already involved in the litigation against other defendants who are represented by Jones' counsel, and who were with Jones in the Federal Bureau of Investigation at the time of his allegedly unlawful conduct. Counsel for Jones is invited to submit with his pretrial brief an appropriate order concerning the claims to be precluded.

Accordingly, it is this 29th day of October 1981 hereby

ORDERED: That the motions to dismiss filed by defen-

III.

Rulings in Limine

1. The alleged conspiracy by District of Columbia law enforcement officers would, if proved, be a violation of 42 U.S.C. § 1985(3). Section 1985(3) applies to proscribed actions taken by any person, irrespective of that person's official capacity, in any "State or Territory." This statute, like 42 U.S.C. § 1982, applies to such unlawful actions in derogation of the rights of racial or other classes in the District of Columbia. See Hurd v. Hodge, 334 U.S. 24, 31 (1948); cf. District of Columbia v. Carter, 409 U.S. 418, 420-24 (1973).

2. Plaintiffs who belong to no racial minority may nevertheless offer evidence to establish, if they can, that they are members of some other non-racial class entitled to protection under 42 U.S.C. § 1985(3) because, for example, of their political activities or associations. See Glasson v. City of Louisville 518 F.2d 899 (6th Cir), cert. denied, 96 S.Ct. 280 (1975).

3. Plaintiffs may offer evidence of alleged "illegal intelligence investigations" in support of their claims with respect to issues described in paragraphs II.1 and II.2 above. Such evidence is inadmissible for the purpose of proving some claim about "invasion of privacy" in the absence of evidence that one or more defendants or a conspiracy of them violated the rights guaranteed to a particular plaintiff by the Fourth Amendment. See Carey v. Piphus, 435 U.S. 247 (1978); cf. Griswold v. Connecticut, 381 U.S. 479 (1965). See also Griswold v. Connecticut, supra, 381 U.S. 479, 507 (Black, J., dissenting).

4. No plaintiff has proffered evidence that any defendant or a conspiracy of them violated that plaintiff's rights under the Fourth Amendment. But see Fed. R. Civ. Pro. 15(b). See generally United States v. Salvucci, 100 S.Ct. 2547 (1980).

5. As a matter of law, United States v. United States District Court, 407 U.S. 297 (1972) must be applied retroactively. Zweibon v. Mitchell, 606 F.2d 1172 (D.C.Cir. 1979). This ruling does not preclude any individual from offering evidence about the state of the law prior to United States v. United States District Court (or his understanding of it) in support of a defense on the issue stated in II.4 above.

6. Plaintiffs' motion to preclude evidence relating to Communist Party affiliation of a plaintiff is denied.

7. Each plaintiff may offer evidence of any mental distress resulting from violation of rights as defined in II.1 above. In the absence of evidence of violation by one or more defendants of rights of a plaintiff guaranteed to him or her by the Fourth Amendment, evidence of mental distress on account of alleged "invasions of privacy" by alleged "illegal intelligence investigations" is not admissible.

SO ORDERED.

Date:

UNITED STATES DISTRICT JUDGE

dants Jones and Pangburn are denied, except insofar as the motions seek dismissal or judgment on the pleadings for failure of plaintiffs to commence action within the time period required by the statute of limitations; and it is further

ORDERED: That on or before November 5, 1981, plaintiffs shall file a memorandum, to be accompanied by exhibits if necessary, indicating the basis of their claim to the benefit of the doctrine of fraudulent or deliberate concealment in the present record, and their position as to whether any factual issue raised is for decision by the Court or by a jury; and it is further

ORDERED: That defendant shall file a response to plaintiff's memorandum within seven days of the time of plaintiffs' filing, and in no event later than November 12, 1981; and it is further

ORDERED: That any evidentiary hearing required to resolve any disputed questions of fact will commence November 23, 1981, either with or without a jury.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al	:	
Plaintiffs,	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et al.	:	
Defendants	:	

(DC Defendants' Proposed Jury Instructions?)

USE OF INFORMANTS

The use of informants by law enforcement agencies to obtain information does not standing alone constitute a violation of constitutional or other legal rights. Likewise use of police officers as"infiltrator" or undercover agents does not give use to any claim of violation of constitutional rights. The law enforcement agency becomes liable for the acts of the informant only where the informant commits an act which is in itself a violation of a constitutional or legal right and where the informant is either continually controlled by the law enforcement agency or is specifically directed to do or commit a particular act.

According you should not consider the evidence regarding informants unless plaintiffs have proved by a preponderance of the evidence that the informant was specifically directed or continuously controlled by one of the defendants and committed and act which in itself was a violation of the constitutional or legal rights of one of the plaintiffs.

Socialist Workers Party v. Attorney General, 510 F. 2d 253 (2nd Cir. 1974); Handshu v. Special Services Division, 349 F. Supp. 766, 769 (S.D. N.Y. 1972)
Slagle v. United States, 612 F. 2d 1157, 1163 (9th Cir. 1980); cF. United States v. Orleans, 425. U.S. 807 (1976)

INTENT

Plaintiffs allege that the defendants acted willfully with the intention of violating their constitutional and civil rights. In this regard willfully means not only voluntarily and intentionally but also includes the specific intent to do the act which the law forbids. Thus. if you find that defendants acted carelessly or inadvertenly, such conduct does not support a finding of willfully. If you find from a preponderance of the evidence that the defendants acted with a bad purpose to disobey or disregard the law then you may find that the defendants act willfully and may be liable for the consequences of their act.

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1. United States v. Patrick, 542 F 2d 381 (7th Cir., 1976) cert. denied 430 U.S. 931, 97 S. Ct. 1551, 51 L. Ed 2d 775 (1977)

2. United States v. Falk, 605 F 2d 1005 (7th Cir. 1979) cert. denied 445 U.S. 903, 100 S. Ct. 1079, 63 L. Ed. 2d 319 (1980)

FIRST AMENDMENT CLAIMS

Plaintiffs allege that the defendants acts violated their rights of free speech and association as protected under the First Amendment to the Constitution. While these rights are undeniably important, they are not absolute or unqualified and may be subordinated to society's need to maintain the social order. Thus where the government acts pursuant to a lawful and necessary governmental purpose these rights may be permissably infringed and these acts do not constitute the type of abridgement proscribed by the Constitution. The impermissable impact which the First Amendment prohibits must arise from governmental conduct which subjects plaintiffs to a present or future exercise, or threatened exercise of coercive governmental power.

Thus, plaintiffs must prove by a preponderance of the evidence that defendants' acts directly abridged their speech or association by means that were coercive, compulsory or proscriptive in nature and which produced specific objective harm. You must consider all the evidence and inquire whether each plaintiff has proven such an abridgement by a particular defendant or by a group of defendants. You must distinguish between a direct abridgement and effects which are only incidental or consequential since only a direct abridgement can support a claim for damages under the First Amendment.

If upon considering the evidence you conclude that no plaintiff was in fact deprived of his or her rights under the First Amendment then you must return a verdict for the defendants.

United Public Workers v. Mitchell, 330 U.S. 75, 95 (1974)
Green v. Spock, 424 U.S. 828 (1976)
Reporters Committee for Freedom of the Press v. American Telephone & Telegraph Co. 593 F 2d 1030. 1052, ___U.S. App. D.C. (1978)

Laird v. Tatum, 408 U.S. 1, 11-14 (1972)
Reporters Committee for Freedom of the Press, supra
Martinez v. California, 444 U.S. 277, 281 and 285 (1980).

FOURTH AMENDMENT CLAIMS

Plaintiffs allege that the defendants acts violated their rights under the Fourth Amendment to the constitution. The Fourth Amendment protects a citizen from unreasonable search of his home or person or an unreasonable seizure of his person, papers or other possessions by government agents.

A person is seized within the meaning of the Fourth Amendment when his physical freedom of movement is restrained by virtue of a show of authority or physical force. A search is unreasonable if done without legal justification or in a manner beyound that which the circumstances require.

Observation or acquisition of information about a person is not a violation of the Fourth Amendment even though that person may not intend government agents to acquire or learn such information. Thus, if a person does something or discloses something in a setting that is observable by governmental agents, no violation of the Fourth Amendment has been committed. Nor is the Fourth Amendment violated where government agents acquire information through an informant or an undercover agent who participated in the conversation or meeting which the person intended to be private. The Fourth Amendment does not protect misplaced trust under such circumstances.

Applying these principles you must consider all evidence and if you find that a plaintiff was seized or if defendants obtained information about the plaintiff through an unreasonable means then you may find for the plaintiff.

If you find that there was no seizure of a plaintiff or if defendants acquired information through mere observation or through an informant whom plaintiff had trusted then you must return a verdict for the defendants.

Bell v. Wolfish, 441 U.S. 520, 558, 59 (1979)
United States v. Mendehall, 446 U.S. 544, 554-55 (1980)

Katz v. United States, 389 U.S. 347, 351 (1967)
Lewis v. United States, 383 U.S. 206, 210-11 (1966)
United States v. White 401 U.S. 745 (1971)
Hoffa v. United States, 385 U.S. 293, 302 (1966)

PLAINTIFF'S CLAIMS UNDER
42 U.S.C. §1985 (3)

Plaintiffs allege that defendants actions entitles them to damages under a civil rights statute, Title 42 of the United States Code, Section 1985, Subsection 3. Many of the plaintiffs claims in which I have previously instructed you pertain to the rights which form the basis of plaintiffs' claims under this section and you should apply those principle to this claim as well.

To establish a claim under 42 U.S.C. §1985 (3) plaintiffs must prove by a preponderance of the evidence five distinct elements:

First, that the defendants entered into a conspiracy, i.e., a common design or plan to do an unlawful act or to achieve a lawful end through unlawful means;

Second, that an overt act was committed in furtherance of the conspiracy;

Third, that the defendants acted with the purpose of depriving plaintiffs of the equal protection of the law or of one or more of the fundamental rights guaranteed under our constitution;

Fourth, that the act or acts in furtherance of the conspiracy injured plaintiffs person or property;

Fifth, that the defendants were motivated by a racial or otherwise discriminatory purpose;

As I stated previously, plaintiff must establish by a preponderance of the evidence each of the five elements. Failure to prove any single element precludes them from receiving damages under this section. You should consider and apply my other instruction concerning plaintiffs other claims with respect to the deprivation of equal protection and fundamental rights which plaintiffs must establish here. You should also apply my instruction or conspiracy as that must also be established.

If you find by a preponderance of the evidence that the five elements have been establish you may render a verdict in plaintiff's favor on this claim. If you cannot find that all five elements have been established, you must render a verdict for the defendants.

Griffin v. Breckinridge, 403 U.S. 88 (1971);
McLellan v. Mississippi Power and Light Co. 545 F. 2d 919, 923 (5th Cir. 1977)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,
Plaintiffs,
v.
JERRY WILSON, et al.,
Defendants.

Civil Action No. 76-1326

FILED
OCT 29 1981
JAMES E. DAVEY, CLERK

ORDER

This matter having come before the court on plaintiffs' Motion for Expedited Response to Requests for Admission, and it appearing that this motion should be granted, it is this 29th day of October, 1981

ORDERED that defendants shall respond to plaintiffs' first and second requests for admissions simultaneously with service of defendants' pre-trial briefs.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

(N)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
DEC 1981
JAMES F. DAVEY, CLERK

JULIUS HOBSON, et al.,

Plaintiffs,

v.

JERRY WILSON, et al.,

Defendants.

Civil Action No. 76-1326

ORDER

The Court on November 25, 1981 directed the District of Columbia defendants to take steps to perfect their claim of an informant's privilege in respect of documents filed under seal on November 13 and November 20, 1981. The Court appended to the Order of November 25, 1981 a list of redactions in documents so filed that may reflect unsupported claims of privilege, and indicated from the Bench on November 25 that a further appendix would be issued when review of the remaining documents permitted. Accordingly, it is this 1st day of December 1981 hereby

ORDERED: that the District of Columbia defendants shall file on or before December 4, 1981 an appropriate affidavit explaining more particularly in what respect each redacted portion listed on the attached Appendix is entitled to an informant's privilege, and why the possible use by plaintiffs to support their claims does not outweigh the informant privilege claim.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

SUPPLEMENTAL APPENDIX

I. OKESON transcript of Nov. 17, 1975:

	Page(s)	Line(s)	
1.	2	12, 15, 17, 35, 38	(referring to activities related to organization with which plaintiffs claim affiliation)
2.	6	24, 26-27	(same as I.1)
3.	7-9	p.7 11.23-end; p.8, p.9, 11.1-30*	(describing details of allegedly actionable intelligence-gathering methodology employed by MPD)
4.	9-10	p. 9 last line to p. 10 1.5	
5.	10	passim**	(naming defendants)
6.	10	1.20	(same as I.1)
7.	10	29	
8.	10-11	passim	(identifying organizations or activities with which plaintiffs claim affiliation)
9.	11	33, 37	(same as I.1)
10.	11-13	passim	(bearing upon supervision of MPD operations by MPD officers; same as I.1)
11.	14	passim	(same as I.10; same as I.1)
12.	14-15	passim**	
13.	15	31-32	(referring to specific FBI defendant)
14.	16, 17, 22, 23, 24, 25, 26, 27 28, 30, 32, 35 44, 45	passim (defendants' names deleted)	(describing acts of particular defendant(s) pertinent to certain of plaintiffs' claims)
15.	17	11.10-25	(describing collaborations of MPD and FBI arguably pertinent to plaintiffs' claims)
16.	18	passim, and especially 1.20	(referring to MPD activities concerning specific plaintiff)
17.	21	passim	(same as I.15)
18.	23	3, 5-8**	(same as I.1)

19.	25	11.1, 3, 5, 10-13, 18**	
20.	29	11.11, 14-16, passim	(same as I.15)
21.	43-44	35-end, 44 passim,** and especially p.43 1.36	(referring to MPD activities concerning specific plaintiff)
22.	55	passim**	(same as I.15)
23.	56	1.30	
II.	ACREE transcript of Jan. 30, 1976:		
1.	13	2-4	(context for answer pertinent to claims that MPD surveillance was unlawful)
2.	15	16,23**	(knowledge of defendant Hughes of certain activities related to plaintiffs' claims)
3.	17, 46, 54, 61, 80, 83, 86	passim**	(same as I.14)
4.	23	23, 31	
5.	24	17, 20	(same as I.8)
6.	30	passim	(referring to collaboration of FBI defendant(s) in MPD operations)
7.	57	21-24	(context for answer concerning extent of certain defendants' knowledge)
8.	58	17-18	(context for answer concerning officials' belief in lawfulness of certain conduct)
III.	SCRAPPER transcript of Aug. 25, 1975:		
1.	7	4	(same as I.3)
2.	19	passim**	(same as I.15)
3.	25	1-11	(same as I.3)
4.	25	23-25**	(noting disposition of evidence of allegedly unlawful MPD activity)
5.	52	passim**	(bearing upon "the legality or illegality of what was being done")
6.	53	passim**	(same as III.5)

7.	56-57	passim**	(describing arguably actionable police interference in demonstration activities in which plaintiffs may have participated)
8.	60	22-24**	(same as I.3)
9.	62-63	passim	(same as I.3)
10.	67, 68	passim**	(same as I.14)
IV.	SCRAPPER transcript of Jan. 9, 1976:		
1.	8	3**	(completing answer respecting "inter-office conflict" arguably pertinent to plaintiffs' claims)
2.	8	28-29	(describing nature of FBI involvement in surveillance activities)
3.	9	[not furnished in redacted copy submitted to the Court]	
4.	28	30-33	(describing FBI-MPD collaboration in surveillance of activities in which plaintiffs participated)
5.	30	6-7	(same as I.1)
6.	35	16	(completing context of description of FBI surveillance pertinent to plaintiffs' claims)
7.	36	4-5	(same as IV.2)
8.	40	11	
9.	53	1-4	

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* It may be possible to protect informants' identities while releasing pertinent information by less extensive redaction of these lines from pages 7-9.

** Defendants should consider and address the possibility of maintaining security and, at the same time, providing information germane to plaintiffs' alleged claims by agreeing to a fact stipulation.

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

OBJECTIONS BY FEDERAL DEFENDANTS
TO PLAINTIFFS' EXHIBIT 88

Plaintiffs' Exhibit 88 is the transcript of a statement by Charles Marcum during an investigation by the Internal Affairs Division into alleged activities of the MPD's Intelligence Division. The statement was made in September, 1975, and subsequently transcribed.

Federal defendants object to admission into evidence of the entire transcript on grounds that it is hearsay. Rules 801, 802, Federal Rules of Evidence.

In addition, federal defendants object to introduction of specific portions of the Marcum statement inasmuch as they are inadmissible hearsay within hearsay. Rule 805, Federal Rules of Evidence. Even through a transcript itself may be admissible under an exception to the hearsay rule, there are often double or triple hearsay problems, and the parties are entitled to object to the admissibility of particular portions of a transcript on specific grounds. Hackley v. Roudebush, 520 F.2d 108, 156-57 n.195 (D.C. Cir. 1975).

The specific portions to which objection is made are identified by red brackets on the attached copies of pages 29 and 30 of plaintiffs' Exhibit No. 88.

Respectfully submitted,

J. PAUL McGRATH
Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge
BROOK HEDGE

David White 1314
DAVID WHITE

Attorneys, Department of Justice
9th & Penn. Ave., N.W.
Washington, D.C. 20530

Attorneys for federal defendants

locked?

A That was what the key was to. The box -- no, we didn't have a key for the box.

Q Was the desk locked?

A Yes.

Q And did you have a key to the desk?

A No, sir.

BY MR. LEARY:

Q You say that you understood that the material that came out of the box -- did you ever see what was in the box yourself?

A Oh, yes, just very briefly, and I had it in my possession for maybe twenty minutes. Just long enough for me to call the office and they responded right down there and picked it up.

Q You gave it to Suter and you said --

A I gave it to Charlie Robinson.

Q To Charlie Robinson and you later understood that it had been given to the FBI?

A Yes, sir.

Q How did you gain that understanding and from whom?

A I was told that by George Suter and Jack Acree. As a matter of fact, both of them, and I also heard it again from Charlie Robinson and I believe John Zelloe.

What had happened was -- the reason they told me

MR ANN TIPTON
wey Court
n, Maryland 20795
6-4436

they wanted that information and had to have it was being that Singer Corporation had a classified contract for missile sites -- sounding devices for missiles -- and that what, in essence, was happening was that Singer Corporation was taking the money from Government contracts that they had and was filtering it back through the Czechoslovakian Embassy to Madame Binh back to support the National Liberation Front in Vietnam and that these documents would prove that and that's the reason they were so hot to get them.

That evidence, or that property, was turned back over to the Bureau and supposedly two Agents got awards for it. It was Agent Grimaldi and Agent Mahoney got a cash bonus for it and they were joking, they said, "Ha, ha. It's a damn shame you didn't get any cash for it."

Then later on, after my cover was blown, Mahoney said, "Thanks a lot. That was good work."

Q When you talked to Mahoney, how far after the fact was that?

A Several months.

Q Did you discuss with Mahoney how you came to get the documents?

A Oh, he knew.

Q Could you go into that a little bit?

A He said, "I heard you almost got caught." I don't remember all the conversation, but that was down at a party

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of November, 1981, I have served upon each of the following counsel, by hand delivery at Washington, D.C., one copy of the foregoing Objections by Federal Defendants to Plaintiffs' Exhibit 88:

Ann Pilsbury, Esq.
17 Danforth Street
Norway, Maine 04268

Laura Bonn, Esq.
Assistant Corporation Counsel
District Building
14th & E Streets, N.W.
Washington, D.C. 20004

Daniel Schember, Esq.
Gaffney, Anspach, Schember,
Klimaski & Marks, P.C.
1712 N Street, N.W.
Washington, D.C. 20036

David H. White / by Leo
DAVID H. WHITE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al. :

Plaintiffs, :

v. :Civil Action No. 76-1326

JERRY V. WILSON, et al., :

Defendnats, :

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE DISTRICT OF COLUMBIA DEFENDANTS REGARDING THE ENTRY OF DOCUMENTS REPOSED AT SUITLAND RECORDS' CENTER UNDER ACCESSION NO. 68-A-5971

On November 20, 1981, the District of Columbia produced, by and through the Deputy General Counsel, [illegible] complete copy of the Index as to Accession Number 68-A-5921 -- a total of one hundred seventy-four (174) hand-written pages, which bear reviewer's identification designations "C", 1 through 30; "D" 1 through 41; "H", 1 through 35; and "K", 1 through 68. The "reviewer(s)" who compiled the Index were the Sergeant (now retired) Paul W. Chesser (reviewer's identification designation "C"), then Sergeant (now retired) Blanco Drummond, Jr. (reviewer's identification designation "D"), Officer Michael Hubbary (reviewer's identification designation "H"), and Sergeant Jerry Kaigler (reviewer's identification designation "K"). See, paras. 3, 5 and 6 of Affidavit of Sergeant Jerry Kaigler, District of Columbia Board of Elections and Ethics ex rel. John Doe, et al. v. Maurice J. Cullinance, et al., Misc. Docket No. 24-77 (Superior Court, Civil Division) -- a true and correct copy of which is attached, and incorporated by reference, "Attachment "A" hereto.

The instant Index as to Accession Number 68-A-5921 was

made the subject of a discovery motion by plaintiffs. Plaintiffs' Motion for Imposition of Sanctions Against District of Columbia Defendants Pursuant to Fed. R. Civ. P. 37 and for Attorneys' Fees (with accompanying Memorandum of Points and Authorities in Support of Sanctions and proposed order) (served by mail on August 9, 1977).[1/] The District of Columbia responded in opposition to the Motion on August 22, 1977, pointing out:

> District defendants have not denied the [illegible] of the boxes of files at the Federal Records Retention Center...Plaintiffs' Interrogatory numbered 7 [as, indeed, the complaint in this action] is explicitedly limited as to time, i.e., 1964-1974. There is no indication that the [illegible] files fall within that time frame [i.e., 1964-1974]. Indeed, in not mentioning them [i.e., the files at the Federal Records' Center] in the answer to Interrogatory numbered 7[,] the clear import is that said records do not pertain to that period [i.e., 1964-1974, which is the stated period for which discovery was sought]. [illegible] to Plaintiffs' Motion for Imposition of Sanctions Against District of Columbia Defendants Pursuant to Federal Rules of Civil Procedure 37 and for Attorneys' Fees, at 2 (emphasis supplied).

1/ The plaintiffs sought "sanctions" based on answers of defendants, Robert L. Zink and Theodore R. Zanders, to Plaintiffs' Interrogatories to Defendants, The District of Columbia, Inspector Robert L. Zink and Assistant Police Chief Theodore R. Zanders, which were served by mail on April 28, 1977

Interrgatory numbered 7 had inquired as to "whether any records that orginated from or were supplemented by the Intelligence Division of the Metropolitan Police between 1964-1974 were sent to the Federal Records Petention Facility in Suitland, Maryland," and was answered "Unknown". The latter answer was later supplemented. Supplemental Answers of Defendants District of Columbia, Zink and Zanders to Plaintiffs Interrogatories, "Attachment B" hereto, post., which are incorporated by reference, paras. 3 and 4. By way of notation, defendant Robert L. Zink in his draft answer to Interrogatory numbered 7 had proposed the following answer: "Departmental records do not indicate any such transfer of documents for the stated period."

an inventory of approximately twenty-three (23) boxes of case files that were retained at the Federal Records Center under Accession Number 68-A-5921 -- a copy of the Records Transmittal And Receipt (i.e., Stand Form 135) being attached to and made part of this affidavit, "Exhibit A", hereto.

4. The aforementioned inventory of the case files which were retained under Accession Number 68-A-5921 was

Inspector Robert L. Zink, Director, Investigative Services Division (formerly, the Intelligence Division), Metropolitan Police Department, who supplied a list of groups concerning which all record(s) and document(s) were to be specifically searched for -- the said list being attached to and made part of this affidavit, "Exhibit B", hereto.

5. The affiant, along with other members of the Investigative Services Division -- i.e., Sergeant Paul W. Chesser, Sergeant Blanco Drummond, Jr., and Officer Michael Hubbard --, did specifically review each and every case file, document by document therein contained, in the said boxes of case files (Accession Number 68-A-5921), recording as reviewing the subject and date of each document within the case file.

6. The aforementioned inventory was continued by the affiant, and others, on a daily, 8 hours a day basis until December 8, 1976, at approximately 2:45 p.m., when the inventory was completed in its entirety.

7. The affiant has reviewed the several subpoenas which have been issued by, or at the request of, the plaintiffs and the completed inventory of the twenty-three (23) boxes of case files, Accession Number 68-A-5921, and no document(s) within the terms of the subpoenas is, or are, contained within the said twenty-three (23) boxes.

8. The above information is true and correct to the best of my knowledge and belief.

Jerry Kaigler

Sworn and subscribed to before me this 13th day of May, 1977.

Tomasha M Hughes
NOTARY PUBLIC, D. C.

My commission expires Aug. 14, 1980.

GENERAL SERVICES ADMIN. REG. 3-IV-214

AND RECEIPT

ACCESSION NO. 68-A-5921

RECORD GROUP NO.

INSTRUCTIONS
Send original and two copies to appropriate Federal Records Center.
EXCEPTION—Send original and three copies to the Alexandria, Virginia, Center

SIGNATURE

DATE RECEIVED

TITLE

FROM: (Name and address of agency transferring records)
Government of the District of Columbia
Metropolitan Police Department

TO: Federal Records Center, GSA

1. CITE SECURITY CLASSIFICATION AND/OR RESTRICTION ON USE OF RECORDS, IF ANY
Authorization of Commanding Officer, Central Records Division

2. SQUARE FEET OF SPACE OCCUPIED		3. FILING EQUIPMENT EMPLOYED			4. CUBIC FEET OF TRANSFERRED
A. OFFICE	B. STORAGE	A. FILE CABINETS (No.)	B. TRANS. FILES (No.)	C. SHELVING (Lin. Ft.)	

5. NAME OF AGENCY CUSTODIAN OF RECORDS	6. BUILDING AND ROOM NO.	7. TELEPHONE EXT.
Lt. Nelson Steele, Metropolitan Police Dept.	Municipal Center, Rm. 4106	629-23

8. MAY THE RECORDS BE DESTROYED AS SCHEDULED WITHOUT FURTHER AGENCY CONCURRENCE? ☐ YES ☐ NO

9. AGENCY OFFICIAL (Signature)	10. TITLE	11. DATE
[signature]	[illegible]	1-[illegible]

12. BOX NUMBERS		13. DESCRIPTION OF RECORDS WITH INCLUSIVE DATES (Show organizational component creating records)	14. DISPOSAL A (Schedule and
FRC ONLY	AGENCY		
BOX		CASE NOS. (Intelligence Division)	
1		1 thru 35	
2		36 thru 52	
3		53 thru 73	
4		14-1-A thru 14-95-A	
5		14-96-1 thru 14-115-26	
6		14-116-1 thru 14-129-19	
7		14-129-20 thru 14-142-4	
8		14-142-5 thru 1667	
9		1668 thru 2052	
10		2053 thru 2250	
11		2251 thru 2480	
12		2481 thru 2743	
13		2744 thru 3071	
14		3072 thru 3420	
15		3421 thru 3728	
16		3732 thru 3821	
17		3825 thru 3860	
18		3862 thru 3923	
19		3924 thru 3981	
20		3982 thru 4055	
21		4055 thru 4153	
22		4154 thru 4305	
23		4305 thru 4410	

"Exhibit A"

STANDARD FORM 135
JULY 1961 EDITION

(Use Standard Form 135A for continuation sheets)

* U.S. GOVERNMENT PRINTING OFFICE: 1961 O-611-[illegible]

NATIONAL SOCIALIST WORKERS PARTY

D. C. SOCIALIST WORKERS PARTY

SOCIALIST WORKERS MUNICIPAL CAMPAIGN COMMITTEES (D.C.)

SOCIALIST WORKERS PARTY

YOUNG SOCIALIST ALLIANCE

SOCIALIST WORKERS CAMPAIGN COMMITTEE

"EXHIBIT B"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al Plaintiffs, v. JERRY V. WILSON, et al Defendants	:	Civil Action No. 76-1326

SUPPLEMENTAL ANSWERS OF DEFENDANTS DISTRICT OF COLUMBIA, ZINK AND ZANDERS TO PLAINTIFFS' INTERROGATORIES

I, Robert L. Zink, Inspector, Metropolitan Police Department, D.C., and defendant in the above-captioned matter, having been first duly sworn under oath, depose and make the following supplemental answers, upon information and belief, to Interrogatories numbered 7, 8 and 9 propounded by plaintiffs to defendant District of columbia and myself:

I, Theodore R. Zanders, formerly Assistant Police Chief, Metropolitan Police Department, D.C., and defendant in the above-captioned case, having been first duly sworn under oath, depose and make the following supplemental answers, upon information and belief, to Interrogatories numbered 7, 8 and 9 of plaintiffs propounded to me:

7. Please state whether any records that originated from or were supplemented by the Intelligence Division of the Metropolitan Police between 1964-74 were sent to the Federal Records Retention Facility in Suitland, Maryland.

A7. I have no knowledge, record or other indication that any such documents were ever forwarded to the Federal Records Center. MPD records indicate that in May 1968, twenty-three boxes of case files pertaining

to various organizations, activities and individuals which were compiled during the period 1932-1960 were sent to the Federal Records Center for routine retention and disposition. The vast majority of the case files are dated in the 1930's and early 1940's. Only fifteen case files are dated between 1957 and 1960. None of the case files originated within the period covered by Interrogatory 7, and all originated before the Intelligence Division was established and became functional in 1968. Also, in 1969 six boxes of documents consisting of Special Police Officers' personnel folders for the period 1950-1963, and general correspondence from an undetermined date up to June 1963, were sent to the Federal Records Center. Also, in 1971 seventeen boxes of Special Police Officer personnel folders for the period 1965-1968 were sent to the Federal Records Center. The Special Police Officer documents are in no way related to the intelligence gathering function of the Intelligence Division, but are an administrative responsibility of that Division established pursuant to D.C. Code §4-115. None of the documents identified above fall within the scope of this Interrogatory.

8. If the answer to the above question is affirmative, please state whether these records were reviewed prior to responding to the plaintiffs' motion for production of documents. [Sic]

AS. Not applicable. However, the twenty-three boxes of case files sent to the Federal Records Center in May 1968, were reviewed prior to preparation of a response to plaintiff's request for production of documents, and, as indicated in answer to Interrogatory numbered 7, none pertain to the instant litigation.

9. Please state whether electronic surveillance was ever (1964-1974) conducted by or at the direction of the District of Columbia defendants against any of the plaintiffs or the following organizations, Washington Area Peace Action Coalition; the Washington Mobilization Committee; the

New Mobilization Committee to End the War in Vietnam; or the Black United Front.

A9. There is no knowledge, record, or other indication that electronic surveillance was directed specifically at the plaintiffs or any of the organizations named in Interrogatory numbered 9. Whether or not one or more of the plaintiffs or members of said organizations were present during electronic monitoring of others where the consent of at least one person was obtained is unknown.

Robert L. Zink
ROBERT L. ZINK

Subscribed and sworn to before me this 6th day of January 1978.

Sonasha M. Hughes
NOTARY PUBLIC

My Commission Expires:
8/14/80

THEODORE R. ZANDERS (Formerly)
Assistant Police Chief
Metropolitan Police Department, D.C.

Subscribed and sworn to before me this _____ day of January 1978.

NOTARY PUBLIC

My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplemental Answers of Defendants District of Columbia, Zink and Zanders to Plaintiffs' Interrogatories, was mailed, postage prepaid, to David Rein, Esquire, 400 Woodward Building, 733 15th Street, N.W., Washington, D.C. 20005; to Burton D. Wechsler, Esquire, 1624 Crescent Place, N.W., Washington, D.C., 20009; to Anne Pilsbury, Attorney-at-Law, 1712 N.Street, N.W., Washington, D.C., 20036; to Daniel Schember, Esquire, 733 15th Street, N.W., Suite 520, Washington, D.C. 20005; David H. White, Esquire, United States Department of Justice, 318 9th Street, N.W., Washington, D.C., 20530; and to Joseph Casey, Esquire, 517 Ring Building, 1200 18th Street, N.W., Washington, D.C., 20036, this _____ day of January 1973.

Assistant Corporation Counsel, D.C.
Attorney for District of Columbia
Defendants
District Building
Washington, D.C. 20004
629-5403

Moreover, in an effort to finally lay the plaintiffs' motion to rest once and for all, defendant, Robert L. Fink, executed under oath Supplemental Answers on January 6, 1978 -- a copy of which is attached, and incorporated by reference, "Attachment B" hereto.

On information and belief no order of this court has directed disclosure of the Index, or the underlying files, and until recently -- on or about August, 1981, or thereafter -- plaintiffs' counsel have not actively pursued such discovery.

Analysis

Even though Rule 26 of the Federal Rules of Civil Procedure (hereinafter, Fed. Rules Civ. Proc., [illegible]) and empowers a party to undertake broad "discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, ... including the existence, description, nature, custody,... and location of any books, documents, or other things and the identity and location of persons having knowledge of any discoverable matter...", Id.,[2/] Rule 26(b)(1) (emphasis supplied). Nonetheless, the Rule does not automatically compel the broadest discovery that is envisioned. A party, who in the first instance is vested with authority to initiate discovery, may elect to forego, and thus limit the broadest, evisioned discovery, and place parameters on discovery as he or she may consider appropriate. See generally, 4 Moore's

2/ Beyond peradventure, under rules of discovery "relevan[ce]" is measured in large not according to specific issues as they may be raised by the pleadings, but rather by reference to, and association with, the nature of the "subject matter", which may be broader than merely relevancy to the issues that are presented by the pleadings.

So, too, "relevan[cy]" permits no consideration of an "objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Id., Rule 26(b)(1). (emphasis supplied.)

Federal Practice, ¶ 26.01, et seq. (2nd ed.) (as supplemented through 1981), and 4A Moore's Federal Practice,¶ 33.29[2], at 33-182: "So far as the interrogatories require the production of information[,] defendants must disclose whatever information it now has as demanded by the interrogatories," quoting from RCA Manufacturing Company v. Decca Records, 1 FRD 444 (S.D.N.Y. 1940) -- emphasis supplied. Such a converse rule-of-reason implicitedly derives from the Rule, itself, given that, as observed, the methods of discovery, particulary "interrogatories", in the Rule's schene "serve as adjunts to the pleadings in limiting

4A Moore's Federal Practice, ante.,¶ 33.29[2], at 33-181, and 33-184.

In the case at bar plaintiffs' specifically limited their interrogatories[3/] to inquire only as to the period "1964-1974". [4/] And the defendants "ha[ve] as demanded" completely (and correctly) responded. See, Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion for Imposition of Sanctions Against the District of Columbia Defendants Pursuant to Federal Rules of Civil Procedure 37 and for Attorneys Fees, ante., and supplemental

---

3/ See footnote 1, supra. Somewhat similarly, the complaint, as the amended complaint, focuses principally on a like period of time (i.e., 1964-1974). See, Complaint, paras. 3-12, 14-16, 18-19, 23, and 25, which is repeated through reference in paras. 28-30. Indeed, the allegations especially as to the District of Columbia defendants is stated to be exclusively "during the period relevant to this complaint, viz. 1964-1974," Complaint, para. 14 as well as paras. 15 and 16.

4/ Beyond gainsay, Plaintiffs' Interrogatories to Defendants, The District of Columbia, Inspector Robert L. Zink and Assistant Police Chief Theodore Zanders, supra note 1, are stated emphatically to address "the period 1964-1974". Id., Interrogatories numbered 1 (which limits equally the time period address by 2 and 3), 4, 6, 7 and 9 -- with 5 and 8 being also subject to the stated time period of the preceding interrogatory.

answers of Defendants District of Columbia, Zink and Zinders to Plaintiffs' Interrogatories, "Attachment 13" hereto, paras. 3 and 4. See also, note, supra, and the text following.

Moreover, even assuming arguendo that the nine (9) potentially identifiable references in the Index to Accession Number 68-A-5921 may relate[5/] to named plaintiffs, group, and/or organizations, such records appear clearly beyond the pale of discovery in this case. The nine (9) identifiable references in the Index to Accession Number 68-A-5921 -- i.e., pages bearing reviewer's identification signations "D-38", "D-41", "H-32", H-34" (two references), "K-51",[6/]

the focused period of time, i.e., 1964-1974, by nearly a decade to nearly three decades.[7/]

5/ Name differences between the named plaintiffs, groups, and/or organizations as distinct from those names that appear in the Index to Recession Number 68-A05921 surely do not permit positive identification. Compare, the denominated, listing of plaintiffs as set forth in the Complaint and the Index references to Accession Number 68-A-5921 -- e.g., pages bearing reviewer's identification designation "D-38", "H-32", "H-34", and "K-66". The Index entry on "K-51" rather conclusively by virtue of the referenced date, "May 23, 1938", evidences that the references is to other than an apparant plaintiff.

6/ As discussed in note 5, supra., this Index entry rather conclusively by virtue of the referenced date, "May 23, 1938", evidences that the reference is to other than an apparant plaintiff.

7/ The respective identified pages of the Index to Reccession Number 68-A-5921 denote the following dates: June 25, 1948; December 11, 1954; September 25, 1950; 1948 and October 29, 1953; May 23, 1938; April 1, 1954 (as to both references); and October 21, 1954.

as identified in footnote 5, supra., there are name differences, and the organizational references to which the identified person(s) and/or group(s) are convicted do not in any way relate to the matters, or activities, which are the subject matter of the instant case.8/ At best, the Index references, and the related documents which spawn the reference, offer no "information" that is capable of being "reasonably calculated to lead to the discovery of advissable evidence," Rule 26(b)(1), particularly in view of the commencement of trial.9/

Respectfully submitted,

JUDITH W. ROGERS
Corporation Counsel, D.C.

JOHN H. SUDA
Deputy Corporation Counsel, D.C.

LAURA W. BONN, (#951327)
Assistant Corporation Counsel, D.C.
Attorney for Defendants
District Building
Washington, D.C. 20004
727-6348

GEORGE N. BARCLAY, (#248849)
Assistant Corporation Counsel, D.C.
Attorney for Defendants
Washington, D.C. 20004
727-6303

8/ The general nature of, and the basis for initiation of the files that are identified under Accession Number 68-A-5921, has been stated by counsel in the sealed portion of the record, and the Index entries on the identified pages corports with, and support, the representation.

9/ Although plaintiffs initially joined with defendants issued as to the discoverability of the Index to Accession Number 68-A-5921, and, indeed, Accessions Number 71-A-5840 (which are denominated to be "Closed Ex-Special Police Officers' Personnel Folders") and 69-A-3237 (which are denominated to relate to "Special Officers" -- not commissioned security guards -- and "General Correspondence" up to June 23, 1963), nevertheless, plaintiffs obviously have not vigorously pursued, or sought to follow up timely, the discovery sought. In fact following the supplemental answers of defendant Zink, "Attachment 13" hereto, it appears that plaintiffs all but abandoned the sought discovery, at least for some nearly three and a half years -- the discovery matter beeing resurrected in mid-August, 1981 on the eve of trial. See, 4A Moore's Federal Practice, supra.,¶ 33.29[2], at 33-183, 33-184, particularly the discussion of McInerney v. Wm. F. McDonald Construction Co., and ¶ 37.02[6], at 37-43.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum of Points and Authorities in Support of the District of Columbia defendants Garding the Index of Documents Reposed at Suitland Records' Center Under Accession No. 68-A-5921, was hand-delivered to Daniel Schember, Esquire, Attorney for Plaintiffs; and David White Attorney for Federal Defendants, this 30thday of November, 1981.

Laura W. Bonn

Assistant Corporation Counsel, D.C.
Attorney for Defendants
District Building
Washington, D.C. 20004
727-6303/727-6348

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al	:	
Plaintiffs,	:	Civil Action No. 76-1326
v.	:	
JERRY V. WILSON, et al	:	
Defendants	:	

ZINK AND ZANDERS TO PLAINTIFFS' INTERROGATORIES

I, Robert L. Zink, Inspector, Metropolitan Police Department, D.C., and defendant in the above-captioned matter, having been first duly sworn under oath, depose and make the following supplemental answers, upon information and belief, to Interrogatories numbered 7, 8 and 9 propounded by plaintiffs to defendant District of columbia and myself:

I, Theodore R. Zanders, formerly Assistant Police Chief, Metropolitan Police Department, D.C., and defendant in the above-captioned case, having been first duly sworn under oath, depose and make the following supplemental answers, upon information and belief, to Interrogatories numbered 7, 8 and 9 of plaintiffs propounded to me:

7. Please state whether any records that originated from or were supplemented by the Intelligence Division of the Metropolitan Police between 1964-74 were sent to the Federal Records Retention Facility in Suitland, Maryland.

A7. I have no knowledge, record or other indication that any such documents were ever forwarded to the Federal Records Center. MPD records indicate that in May 1968, twenty-three boxes of case files pertaining

to various organizations, activities and individuals which were compiled during the period 1932-1960 were sent to the Federal Records Center for routine retention and disposition. The vast majority of the case files are dated in the 1930's and early 1940's. Only fifteen case files are dated between 1957 and 1960. None of the case files originated within the period covered by Interrogatory 7, and all originated before the Intelligence Division was established and became functional in 1968. Also, in 1969 six boxes of documents consisting of Special Police Officers' personnel folders for the period 1950-1963, and general correspondence from an undetermined date up to June 1963, were sent to the Federal Records Center. Also, in 1971 seventeen boxes of Special Police Officer personnel folders for the period 1965-1968 were sent to the Federal Records Center. The Special Police Officer documents are in no way related to the intelligence gathering function of the Intelligence Division, but are an administrative responsibility of that Division established pursuant to D.C. Code §4-115. None of the documents identified above fall within the scope of this Interrogatory.

8. If the answer to the above question is affirmative, please state whether these records were reviewed prior to responding to the plaintiffs' motion for production of documents. [Sic]

AS. Not applicable. However, the twenty-three boxes of case files sent to the Federal Records Center in May 1968, were reviewed prior to preparation of a response to plaintiff's request for production of documents, and, as indicated in answer to Interrogatory numbered 7, none pertain to the instant litigation.

9. Please state whether electronic surveillance was ever (1964-1974) conducted by or at the direction of the District of Columbia defendants against any of the plaintiffs or the following organizations, Washington Area Peace Action Coalition; the Washington Mobilization Committee; the

New Mobilization Committee to End the War in Vietnam; or the Black United Front.

A9. There is no knowledge, record, or other indication that electronic surveillance was directed specifically at the plaintiffs or any of the organizations named in Interrogatory numbered 9. Whether or not one or more of the plaintiffs or members of said organizations were present during electronic monitoring of others where the consent of at least one person was obtained is unknown.

ROBERT L. ZINK

Subscribed and sworn to before me this 6th day of January 1978.

NOTARY PUBLIC

My Commission Expires:
8/14/80

THEODORE R. ZANDERS (Formerly)
Assistant Police Chief
Metropolitan Police Department, D.C.

Subscribed and sworn to before me this _____ day of January 1978.

NOTARY PUBLIC

My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplemental Answers of Defendants District of Columbia, Zink and Zanders to Plaintiffs' Interrogatories, was mailed, postage prepaid, to David Rein, Esquire, 400 Woodward Building, 733 15th Street, N.W., Washington, D.C. 20005; to Burton D. Wechsler, Esquire, 1624 Crescent Place, N.W., Washington, D.C., 20009; to Anne Pilsbury, Attorney-at-Law, 1712 N.Street, N.W., Washington, D.C., 20036; to Daniel Schember, Esquire, 733 15th Street, N.W., Suite 520, Washington, D.C. 20005; David H. White, Esquire, United States Department of Justice, 318 9th Street, N.W., Washington, D.C., [illegible] and to Joseph Casey, Esquire, 517 Ring Building, 1200 18th Street, N.W., Washington, D.C., 20036, this _____ day of January 1973.

Assistant Corporation Counsel, D.C.
Attorney for District of Columbia
Defendants
District Building
Washington, D.C. 20004
629-5403

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS ex rel. JOHN DOE, et al.,	:	
Plaintiffs,	:	Miscellaneous Docket No. 24-77
v.	:	
MAURICE J. CULLINANE, et al.,	:	AFFIDAVIT OF SERGEANT JERRY KAIGLER
Defendants.	:	

DISTRICT OF COLUMBIA, ss.:

JERRY KAIGLER, being first duly sworn, deposes and say
says that:

1. He is a member of the Metropolitan Police Department, Washington, D. C., having obtained the rank of Sergeant.

2. He is, and has been since August 31, 1975, assigned to the Investigative Services Division (formerly, known as the Intelligence Division), Metropolitan Police Department, Municipal Center, 300 Indiana Avenue, N. W., Washington, D. C. 20001 (telephone 626-2914).

3. On December 1, 1976, at approximately 7:30 a.m., the affiant, along with Sergeant Paul W. Chesser, Sergeant Blanco Drummond, Jr., and Officer Michael Hubbary, did commence at the Federal Records Center, Suitland, Maryland,

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JULIUS HOBSON, et al.,

Plaintiffs.

v.

JERRY WILSON, et al.,

Defendants.

PLAINTIFFS' INTERROGATORIES TO DEFENDANTS, THE DISTRICT OF COLUMBIA, DIRECTOR ROBERT L. ZINK AND ASSISTANT POLICE CHIEF THEODORE R. ZANDER

Pursuant to Rule 33, Federal Rules of Civil Procedure, the above defendants are requested to submit written responses under oath within thirty

received by the above defendants after submitting their responses, they are requested to supplement their responses pursuant to F.R.C.P. 26(e).

1. State whether the [illegible] documents produced by defendant Robert L. Zink in response to the plaintiffs' second request for production of [illegible] pertaining to the plaintiffs or their activities which have been in the possession, custody or control of the District of Columbia defendants at any time within the period 1964-1974?

2. If the answers to the first interrogatory is negative, describe in detail why the remaining documents have not been produced.

3. If any documents pertaining to the plaintiffs or their activities were destroyed by the District of Columbia defendants or their agents please state the date such documents were destroyed, the name of the officer/officers who gave the order to destroy the documents, and the person/persons who was/were in charge of the actual, physical destruction of the documents.

4. Please state to the best of your recollection whether copies of any documents on the plaintiffs or their activities were ever provided to any other governmental agencies (including other District of Columbia agencies) during the period 1964-1974 and, if so, which agencies.

4/3/72

5. Please state whether microfilm or any type of photographic record was made of any documents pertaining to the plaintiffs or their activities for storage in a central record system whether within or without the District of Columbia or federal government.

6. Please list the name and last known address for all paid informants, agents or special police officers employed by the District of Columbia defendants on the political or social activities of any of the plaintiffs in the period 1964-1974 and who are not named as defendants in this lawsuit.

7. Please state whether any records that originated from or were supplemented by the Intelligence Division of the Metropolitan Police between

8. If the answer to the above question is affirmative, please state whether these records were reviewed prior to responding to the plaintiffs' motion for production of documents.

9. Please state whether electronic surveillance was ever (1964-1974) conducted by or at the direction of the District of Columbia defendants against any of the plaintiffs or the following organizations, Washington Area Peace Action Coalition; the Washington Mobilization Committee; the New Mobilization Committee to End the War in Vietnam; or the Black United Front.

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Of Counsel:

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Barton F. Stichman
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(202) 265-9500

Attorneys for Plaintiffs

Certificate of Service

I certify that on this 28th day of April, 1977, a true copy of the foregoing Plaintiffs' Interrogatories to Defendants, The District of Columbia, [illegible] mailed, first class, post prepaid to George F. Masson, Assistant Corporation Counsel, D.C., District Building, Washington, D.C. 20004, attorney for D. C. defendants and to David H. White, Esq., United States Department of Justice, Washington, D.C. 20530, attorney for federal defendants.

David Rein

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et al.,	:	
Defendants,	:	

MEMORANDUM OF DISTRICT OF COLUMBIA DEFENDANTS CONCERNING "PIERCING" OF THE INFORMANT'S PRIVILEGE

that the parties submit a memoranda on the hypothetical question of whether the informant's privilege may be pierced where direct evidence has been presented that an agent of a governmental body has committed a tortious or illegal act. The District of Columbia defendants submit as follows:

The question presented in the instant case is whether a law enforcement agency may invoke the informant's privilege where a person whose name is known has committed a tortious or illegal act and plaintiff inquires as to whether that person is an agent of the law enforcement body. Under these facts, case law research has revealed no support for the invoking of the informant's privilege. Accordingly, it would appear that the agency relationship, if any, can not be protected through a invocation of the informant's privilege.

Judith W. Rogers /LWB
JUDITH W. ROGERS
Corporation Counsel, D.C.
John H. Suda /LWB
JOHN H. SUDA
Deputy Corporation Counsel, D.C.

Laura W. Bonn
LAURA W. BONN, (#951327)
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George N. Barclay/lwb
GEORGE N. BARCLAY, (#248849)
Assistant Corporation Counsel, D.C.
Attorney for Defendnats
District Building
Washington, D.C.
727-6303

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum of District of Columbia Defendants Concerning "Piercing" of the Informant's Privilege, was hand-delivered to Daniel Schember, Attorney for Plaintiffs; and David White Attorney for Federal Defendants, this 30th day of November, 1981.

Laura W. Bonn
Assistant Corporation Counsel, D.C.
Attorney for Defendants
District Building
Washington, D.C. 20004

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,

Plaintiffs,

v.

JERRY V. WILSON, et al.,

Defendants.

Civil Action No. 76-1326

FILED
NOV 25 1981
JAMES F. DAVEY, CLERK

MEMORANDUM AND ORDER

The Court has considered, on an expedited basis, defendants' claim of an informant's privilege in respect of portions of voluminous Metropolitan Police Department ("MPD") documents filed under seal on November 13 and November 20, 1981. The defendants support their informant privilege claim solely by the representations of Richard S. Brooks, of the MPD Office of General Counsel. The claims are expressed entirely by redaction. On the eve of trial and in the early days of the trial, the Court has examined the redacted and unredacted documents. Since they were submitted in camera at the request of the MPD, the Court has not had the assistance of briefs by plaintiffs.

The Court's examination sua sponte of relevant authorities (Roviaro v. United States, 353 U.S. 53 (1957); McCray v. Illinois, 386 U.S. 300 (1967); Hampton v. Hanrahan, 600 F.2d 600 (7th Cir. 1979); and Black v. Sheraton Hotel Corp. of America, 564 F.2d 550 (D.C. Cir. 1977)) establish a "balancing test": The Court must balance the public interest in protecting informants against the requirements of a litigant for evidence relevant to a bona fide civil claim. Obviously, under this test, not every possibility that disclosure could lead a clever and determined public enemy to an informant will sustain a privilege claim.

A still incomplete examination of the documents claimed to be privileged indicates that the MPD may not have applied this standard correctly. In addition, this incomplete examination discloses that some materials relevant to plaintiffs' claim have

been redacted without any possible risk to disclosure of an informant. Specifically, MPD officials have redacted material which might support plaintiffs' claim that some defendants violated plaintiffs' constitutional rights by negligent or grossly negligent failure to supervise and train employees and independent contractors engaged for the purposes at issue here. Accordingly, by order from the bench, the Court has directed the MPD to disclose to plaintiffs forthwith (1) from the Marcum transcript line 21 on page 34 to line 2 on page 35 inclusive, and (2) from the Spiker transcript lines 1-13 on page 39 inclusive.

In order to enable the parties to litigate the balance of the redactions which may reflect presently unsupported claims of privilege, an appendix to this Order will list specific pages from the Winkelman report so far reviewed by the Court. On or before 9 a.m., November 30, 1981, MPD defendants shall file an appropriate affidavit explaining more particularly, if the affiant can, in what respect each redacted portion identified in the appendix is entitled to the informant privilege, and why the possible use by plaintiffs to support their claims does not outweigh the informant privilege claim. See generally Black v. Sheraton Hotel Corp. of America, supra at 552-53.

It is SO ORDERED.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

Date: November 25, 1981
3:15 P.M.

APPENDIX

I. MARCUM transcript of August 8, 1975:

	Page	Line	
1.	8	14-16*	(referring to surveillance activities directed at organizations in which plaintiffs allegedly were active)
2.	9	1-5*	(same as I.1, supra)
3.	75	16-21*	
4.	91	9-20*	
5.	94	1, 10-11	(indicating time before which evidence of electronic surveillance could not have been destroyed by MPD)
6.	96	12-20*	
7.	136-137	136 11.24-25, 137 11.1-12*	(indicating defendant Herlihy's direct participation in electronic surveillance program directed at organization(s) in which plaintiffs were active)
8.	Supp. 2	30	(providing context for answer in lines 31-32 indicating steps taken, or not taken, to ensure that consent for MPD surveillance was valid)
9.	Supp. 9-10	9 11.27-33, 10 11.1-8, 10-14*	(indicating participation by MPD non-defendants under supervision of defendants, in interstate monitoring of unidentified organization, and individuals)

II. SPIKER transcript of October 22, 1975:

1.	25	21-22	(indicating belief of MPD defendants that organizations in which plaintiffs were active had office in building targeted by MPD for covert entry)

2.	26	[entire page not furnished in redacted submission to the Court]	(indicating MPD activity involving trespass and invasion of privacy of unnamed individuals)
3.	27	(last line)	(providing context for answer, given on p. 28, about activities of defendant Herlihy related to surveillance of unspecified individuals)
4.	28	22*	(same as I.1, supra)
5.	32	[entire page not furnished in redacted submission to the Court]	(describing activities related to covert entry at 1029 Vermont Ave., N.W.)
6.	42	13-20*	(describing MPD activities concerning associates of plaintiffs already mentioned in plaintiffs' affirmative case)

III. ROBINSON transcript of November 4, 1975:

1.	41	21-27	(same as I.1, supra)

L. F-U-

* Defendants should consider and address the possibility of maintaining security and, at the same time, providing information germane to plaintiffs' alleged claims by agreeing to a fact stipulation.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

LIST OF WITNESSES

The following are the witnesses that are most likely to be called by plaintiffs. Plaintiffs respectfully reserve the right to substitute witnesses on this list with witnesses from the witness list as submitted with plaintiffs' pretrial list.

Jack Acree ✓

Sammie Abbott ✓
~~Alan Albert~~ Stu Albert

John T. Aldhizer ✓

Matt Andrea ✓

William H. Bailey ✓
~~Chuck Barrett~~

The Honorable Marion Barry ✓
~~Terry Becker~~ ✓

C. Edward Behre ✓
~~Chip Bertet~~

Barbara Bick - no label ✓

Delores Binsted ✓

James Binsted

Abe Bloom - crossed out on labels ✓

Reginald Booker ✓
~~Bob Boresaq~~

Randy Bregman ✓

Charles Brennan ✓

Edward Brooke ✓

Richard S. Brooks ✓

Harold Bynum ✓

Donald Campbell ✓

Mike Canfield - no label ✓

The Rev. John Carter - no label ✓

Charlie Cassells - no label ✓

Mel Kovacs – no label

Carol Cullum – no label ✓

~~Mike Drobinaire~~

Blanco Drummond ✓

The Rev. David Eaton ✓

Gabriel Edgcomb ✓

Harry G. Ervin ✓

Carol Evans ✓

~~Walter Fauntroy~~

Jan Fentey ✓

Albert W. Ferguson ✓

~~Vic Fischer~~

John Fleming ✓

James Forman ✓

John (Jan) Francis ✓

Ann Gallivan

~~Eleanor Garst~~

Dixie Gildon ✓

~~Robert Justin Goldstein~~

Jerry Gordon ✓

Gerald T. Grimaldi ✓

~~Peter A. Gullota, Jr.~~

Don Gurewitz ✓

~~Helen Gurewitz, Fred Halstead~~

John Harding

Thomas Herlihy ✓

~~Phil Hirschkop~~

Tina Hobson ✓

~~Alex Fay~~

Edward Jagen ✓

Courtland Jones

Absalom Jordan ✓

David Jordan ✓

Victor Kaufman

~~Jeffrey Kaydern, Joseph Kellar, Robert Kelley~~

Garrett Kirwin, Jr. ✓

Bob Lamb ✓

Sid Lens ✓

Hannah Levin – no label ✓

~~Carole Lipman~~

Mark Looney ✓

John B. Layton – no label ✓

~~Shelby Lukins, Bradford Lytle~~

Dorothy McGhee ✓

John W. Mahaney ✓

JoAnne Malone ✓

Charles Marcum - no label

Stewart Meachem ✓

The Rev. Douglas Moore ✓

George C. Moore ✓

Philip Mostrom
John O'Connor
Sheila O'Donnell

Herman C. Oglesby ✓
Cryl Paine

Gerould Pangburn ✓

Sid Peck ✓

Channing Philips ✓

Ruth Pinkson ✓

Richard P. Pollock ✓

Fred Raines

Harlan Randolph ✓

John Rees ✓

Louise Rees ✓

Pat Richards - no label ✓

Ellen Riger ~~[illegible]~~ ✓
~~Don Rothbard~~
~~Edward Robertson~~

John Rudder ✓
Edward T. Rudiak
Margaret Russell David Ryan

Steve Sachs ✓
~~Christopher Scrapper~~

Wilfred R. Schlarman ✓

Christopher Scrapper ✓

Robert L. Shackleford - no label

Polly Shackelton ✓

Peggy Shaker ✓

Carl Shoffler
~~Trudy Shuty~~ ~~Jane Silverman~~
~~John Smallwood~~

Betty Smallwood ✓

Syd Stapleton ✓

George R. Suter ✓
~~Ethel Taylor~~

Robert N. Torres ✓

Bill Treanor ✓
~~George Vickers~~

Edith Villastrigo ✓
~~Edwin A. Waite, Jr.~~
Robert Wall - no label ✓

Raymond Wannall ✓

Arthur I. Waskow - no label ✓

~~Roger Whitehead~~
~~Sherry Whitehead~~
~~Steve Wilcox~~

Dagmar Wilson

Jerry V. Wilson

Melvin A. Winkleman

David Wise

Ron Young

Theodore Zanders

John J. Zelloe

Robert L. Zink

Jane Doe

William H. Webster

Eric J. Wahl

Cora Weiss

Phebe Zimmerman

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Of Counsel:

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Union Fund of the
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(202) 544-1076

CERTIFICATE OF SERVICES

I certify tnat a copy of the foregoing list of witnesses was served on David White, counsel for federal defendants and Laura Bonn, counsel for D.C. defendants this 16th day of November, 1981.

S. E. McNeil

J. E. McNeil

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

STIPULATION CONCERNING FILING
OF TRANSCRIPTS OF BYNUM AND WILSON

The counsel for plaintiffs and defendants stipulate that the copies of the transcripts filed with the Court this ____ day of November of Harold Bynum, July 9, 1981 and Jerry Wilson, August 3, 1981 are true and correct copies.

/s/
Counsel for D.C. Defendants

Daniel M Schember
Counsel for Plaintiffs

Counsel for Federal
Defendants

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

PLAINTIFFS' ADDITIONS AND AMENDMENTS
TO VOIRE DIRE QUESTIONS AND REQUEST
FOR ADDITIONAL PEREMPTORY CHALLENGES

1. Question four should read "is personally acquainted with anyone of them" [plaintiffs] instead of "knows anyone of them"...

2. An additional question to follow question seven as follows:

Would it be difficult for any of you to find against the District of Columbia if the evidence warranted it?

3. An addition to question eight as follows:

Please state what law enforcement agency and whether the person is now so employed or used to be.

4. An additional question to follow question nine as follows:

Would it be difficult for you to find against federal employees if the evidence warranted it?

5. Question twelve should read:

Is there anyone on the jury panel who has any feelings that people who protest against government policies are unpatriotic?

6. Question fifteen should be deleted.

7. Question seventeen should be deleted provided plaintiffs' motion in limine has been granted. If not granted, the question should read:

How many people in the panel believe that it is illegal to be a member of the Communist Party, U.S.A. in this country? And how many of you feel yourselves that if is not illegal, it should be?

8. An additional question as follows:

Has anyone on the panel ever themselves participated or helped out in a police or security investigation?

9. An additional question as follows:

Does anyone on the panel belong to a police auxillary organization or serve or have served as a volunteer policeman?

10. Without mentioning anyone's name, does anyone know a person who has been an undercover agent, plain clothes policeman or an informant?

11. Does anyone work for, belong to, or consider themselves a member of the following groups or organizations?

The Heritage Foundation
The John Birch Society
The Moral Majority
The D.A.R.
The Unification Church

12. Would those jurors who, as a rule, attend church or some type of religious services at least twice a month please identify themselves.

13. How many members of the panel have completed high school or hold GED's? And how many of you have attended college; graduated college?

14. Is there anyone who for any reason we have not addressed feels he or she would find it difficult or uncomfortable to sit on this jury?

* * * *

Plaintiffs further request that the Court exercise its discretion under Fed. Rule Civil Pro. 47 and 26 U.S.C. 3424 and grant them additional peremptory challenge in view of the complexity and nature of the controversial issues and number of plaintiffs in the case.

Anne Pilsbury

Anne Pilsbury
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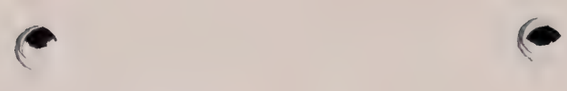

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

MOTION BY DEFENDANT COURTLAND J. JONES FOR RECONSIDERATION OF THIS COURT'S ORDER OF OCTOBER 29, 1981

Defendant Courtland J. Jones, through his undersigned counsel, moves for reconsideration of this Court's Order of October 29, 1981, denying his motion to dismiss.

In support of this motion defendant Jones relies upon the attached memorandum of points and authorities.

Respectfully submitted,

J. PAUL McGRATH
Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge
BROOK HEDGE

David H. White
DAVID H. WHITE

Attorneys, Department of Justice
10th & Constitution Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 633-4269

Attorneys for Defendant
Courtland J. Jones

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

This matter having come before this Court on Defendant Courtland J. Jones' motion for reconsideration of this Court's Order of October 29, 1981, denying his motion to dismiss, and the Court being fully advised in the premises, it is this _____ day of November, 1981,

ORDERED that the motion for reconsideration be, and hereby is, granted; and it is further

ORDERED that defendant Courtland J. Jones' motion to dismiss be, and hereby is, granted.

_____
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY DEFENDANT COURTLAND J. JONES FOR RECONSIDERATION OF THIS COURT'S ORDER OF OCTOBER 29, 1981

This action was commenced on July 16, 1976. By Amended Complaint filed December 7, 1977, Courtland J. Jones was added as a party defendant but was dismissed for insufficiency of service of process by Order of this Court dated November 9, 1979. On June 21, 1981, defendant Jones was served with the Summons and Amended Complaint. He thereafter moved to dismiss on grounds that, among other things, the plaintiffs had failed to prosecute the action as against him and that he had been unfairly prejudiced by plaintiffs' untimely service of process.

On October 29, 1981, this Court denied defendant Jones' motion to dismiss. With regard to the issue of the untimely service of process, the Court held that defendant Jones was not prejudiced "if plaintiffs are precluded from raising any claim against him not stemming from acts already involved in the litigation against other defendants who are represented by Jones' counsel . . . ."

The effect of the ruling is that the personal knowledge gained by defendant Jones' attorney in representing other defendants was deemed by the Court to be sufficient to protect defendant Jones' interests and nullified any detriment that would be suffered by deprivation of the opportunity for discovery. It must be noted, however, that during the time following the dismissal in 1979 and prior to service of process upon defendant Jones in June of 1981, counsel for the federal defendants made no discovery demands

relating to plaintiffs' claims against defendant Jones.*/ Consequently, prior to filing their Pretrial Brief on October 22, 1981, plaintiffs had not specified in any way the nature of their claims against defendant Jones. The validity of the proposition that the discovery on behalf of the other defendants was sufficient for defendant Jones has not been demonstrated, and plaintiffs have not established that he suffered no prejudice. See Anderson v. Air West, Inc., 542 F.2d 522 (9th Cir. 1976). Plaintiffs have also failed to offer any explanation for their failure to effect timely service of process.

An additional implication of the Court's ruling of October 29, 1981, is that the finding of no prejudice, notwithstanding the egregious delay in service, rests entirely on the personality of defendant Jones' counsel. In other words, if defendant Jones had retained any other attorney, the Court could not have found an absence of prejudice and, presumably, the motion to dismiss would have been granted. There is thus created the unique situation that a defendant's selection of counsel, rather than the merits of the issues, has governed whether he will be put to the risk of being held liable in damages.

Conclusion

Defendant Jones respectfully suggests that the Court's ruling of October 29, 1981, was incorrect and should be reconsidered.

Respectfully submitted,

J. PAUL McGRATH
Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge 10th
BROOK HEDGE

*/ Since defendant Jones was dismissed from the action in November, 1979, the undersigned counsel no longer represented any interest of Mr. Jones. When Mr. Jones was served with the Summons and Amended Complaint on June 21, 1981, he again sought representation by the Department of Justice but, of course, was free to choose outside counsel.

DAVID H. WHITE

Attorneys, Department of Justice
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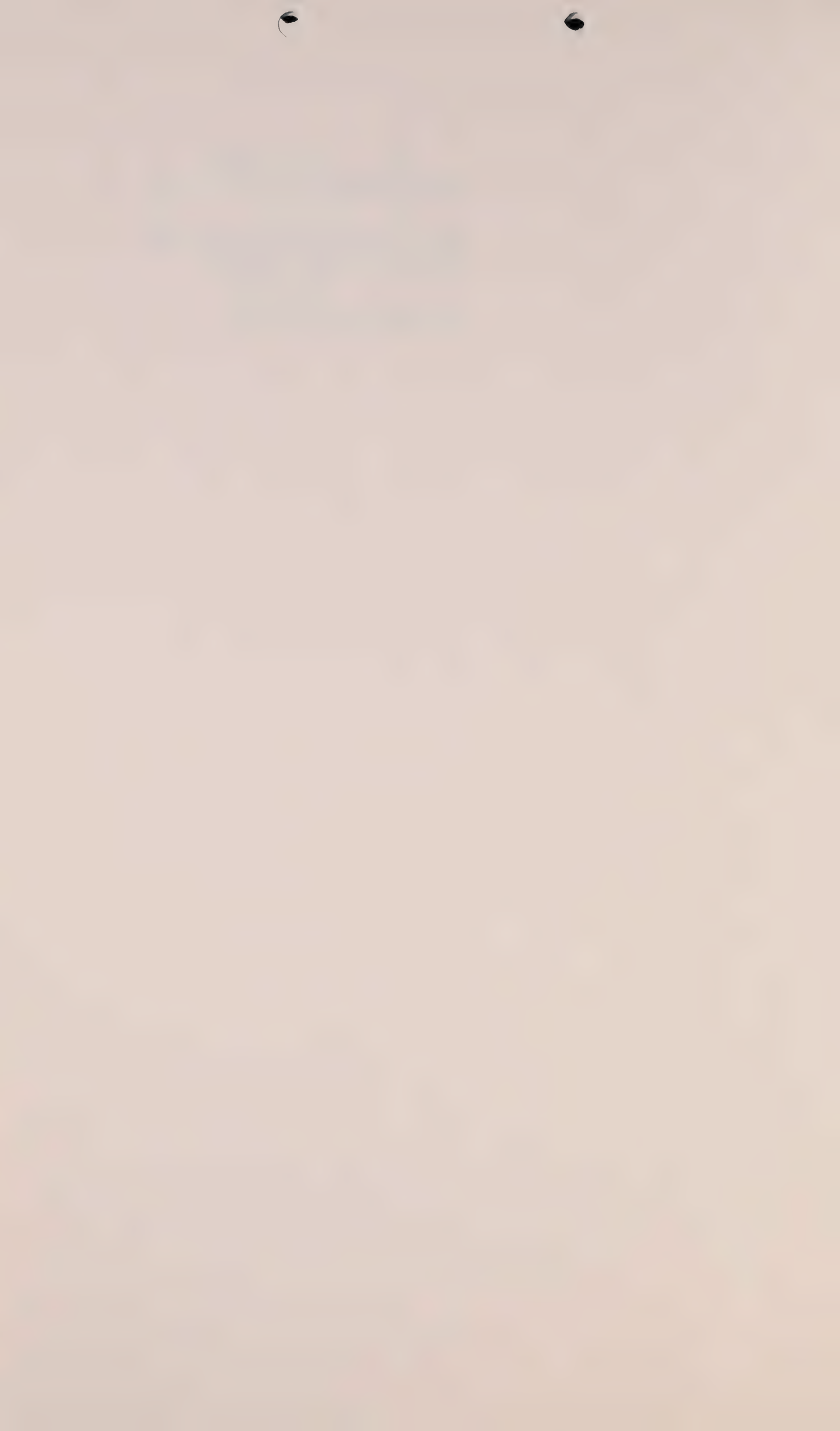
Attorneys for Defendant
Courtland J. Jones



CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing MOTION BY DEFENDANT COURTLAND J. JONES FOR RECONSIDERATION OF THIS COURT'S ORDER OF OCTOBER 29, 1981, accompanying memorandum of points and authorities in support, and proposed ORDER.

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Urban Law Institute for the
Antioch School of Law
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Anne Pilsbury, Esquire
17 Danforth Street
Norway, Maine 04268

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DAVID H. WHITE
Attorney, Department of Justice
Washington, D.C. 20530

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

MOTION FOR SEPARATE TRIAL OF CLAIMS AGAINST DEFENDANT COURTLAND J. JONES AND MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANT COURTLAND J. JONES

David H. White, pursuant to Rule 42 of the Federal Rules of Civil Procedure and Rule 1-4 of the Rules of this Court, and in the event this Court denies Motion by Defendant Jones for Reconsideration of the Order of October 29, 1981, moves to withdraw as counsel for defendant Courtland J. Jones and further moves for a separate trial of the claims by plaintiffs against defendant Jones.

In support of this motion counsel relies upon the attached memorandum of points and authorities.

Respectfully submitted,

J. PAUL McGRATH
Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge /DHW
BROOK HEDGE

Dav H. Whit
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Telephone: (202) 633-4269

Attorneys for defendant
Courtland J. Jones

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

This cause having come before the Court on motions by Mr. David H. White to withdraw as counsel for defendant Courtland J. Jones and for a separate trial of the claims by plaintiffs against defendant Jones, and the Court being fully advised in the premises, it is this _____ day of November, 1981:

ORDERED that the motion of David H. White to withdraw as counsel for defendant Courtland J. Jones be, and hereby is, granted; and it is further

ORDERED that the claims against defendant Jones shall be severed from the remaining claims, and the trial of the claims against defendant Jones shall occur on a date to be set by order of this Court following the entry of appearance of new counsel for defendant Jones.

_____
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM IN SUPPORT OF MOTION FOR SEPARATE TRIAL OF CLAIMS AGAINST DEFENDANT COURTLAND J. JONES AND MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANT COURTLAND J. JONES

In support of the motion to withdraw as counsel in this action for defendant Courtland J. Jones and for separate trial of the claims by plaintiffs against defendant Jones, the following averments are made:

1. David H. White is an attorney employed by the United States Department of Justice and has represented the various federal defendants in this action since its commencement in July, 1976.

2. Courtland J. Jones was added as a party defendant to this action by the Amended Complaint filed December 7, 1977. In December, 1978, service of process was attempted upon defendant Jones. Pursuant to regulations of the Department of Justice, 28 C.F.R. § 50.15, Mr. Jones requested representation by the Department of Justice. This request was granted and attorney David White undertook representation.

3. By order of November 9, 1979, following motion filed by his counsel, defendant Courtland J. Jones was dismissed from this action.

4. On June 21, 1981, defendant Jones was served with the summons and complaint and directed to answer within 60 days. Pursuant to Department of Justice regulations, he requested and received representation by the Department of Justice.

5. On July 31, 1981, discovery in this action was closed by order of this Court.

6. On August 20, 1981, by way of papers prepared by David H. White, defendant Jones moved to dismiss on grounds that, among other things, plaintiffs had failed to prosecute the action as to him and he was prejudiced by the untimely service of process.

7. On October 29, 1981, this Court denied defendant Jones' motion to dismiss, holding that defendant Jones

> ". . . will suffer no prejudice if plaintiffs are precluded from raising any claim against him not stemming from acts already involved in the litigation against other defendants who are represented by Jones' counsel, and who were with Jones in the Federal Bureau of Investigation at the time of his allegedly unlawful conduct." [Emphasis supplied.]

The foregoing demonstrates that the major, if not the sole, reason that defendant Jones was not dismissed from this action is that he is represented by David H. White. The holding of this Court suggests that the knowledge gained by David H. White in representing other defendants in this action dissolves the prejudice suffered by defendant Jones in not being permitted the opportunity to engage in discovery and to pursue his other procedural and legal rights as a litigant. It naturally follows that if defendant Jones had retained private counsel rather than requesting representation by the Justice Department he would have been dismissed from this action. In other words, defendant Jones has been penalized by his choice of counsel so that there exists a conflict between defendant Jones and his present counsel which requires that David H. White be granted leave to withdraw his appearance as counsel for defendant Jones.

Inasmuch as trial of this action is only a few days hence, defendant Jones should be given a separate trial to enable him an opportunity to find and retain other counsel and to give new counsel an opportunity to take appropriate action to protect defendant Jones' interest.

Respectfully submitted,

J. PAUL McGRATH
Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge

BROOK HEDGE

David H. White

DAVID H. WHITE

Attorneys, Department of Justice
10th & Constitution Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 633-4269

Attorneys for defendant
Courtland J. Jones

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

CERTIFICATE OF DAVID H. WHITE

As directed by Rule 1-4(c)(2) of the Rules of the United States District Court for the District of Columbia, David H. White states as follows:

1. The present address of Courtland J. Jones is

6607 North 29th Street
Arlington, Virginia 22213

2. On November 16, 1981, I spoke to Mr. Jones and explained to him that I would be moving to withdraw as his attorney in this civil action. I also explained to him the grounds for this motion, and he advised me that he would retain private counsel to represent his interests in connection with the motion to withdraw.

3. On November 17, 1981, I spoke with attorney Brian P. Gettings, 1400 N. Uhle, Arlington, Virginia, who is admitted to practice in the District of Columbia. Mr. Gettings has been retained by Mr. Jones, and he advised me that Mr. Jones will not oppose the motion to withdraw or the motion for separate trial.

4. I declare under penalty of perjury that the foregoing is true and correct.

Executed On: November 17, 1981

David H. White
DAVID H. WHITE

CERTIFICATE OF SERVICE

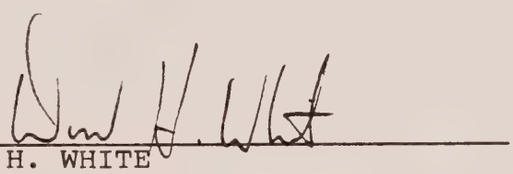
I hereby certify that on this 17th day of November, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing MOTION FOR SEPARATE TRIAL OF CLAIMS AGAINST DEFENDANT COURTLAND J. JONES AND MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANT COURTLAND J. JONES, accompanying memorandum of points and authorities in support, and proposed ORDER.

Herb Semmel, Esquire
Urban Law Institute for the
Antioch School of Law
1624 Crescent Place, N.W.
Washington, D.C. 20009

Anne Pilsbury, Esquire
17 Danforth Street
Norway, Maine 04268

Laura Bonn, Esquire
Assistant Corporation Counsel
District Building
14th and E Streets, N.W.
Washington, D.C. 20004

Daniel Schember, Esquire
Gaffney, Anspach, Schember,
Klimaski & Marks, P.C.
1712 N Streets, N.W.
Washington, D.C. 20036



DAVID H. WHITE
Attorney, Department of Justice
Washington, D.C. 20530

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-]326
	)	
JERRY WILSON, et al.,,	)	
	)	
Defendants.	)	

NOTICE OF FILING

The following items were filed with the Court this 30th day of November, 1981:

Deposition of:	Date
Richard S. Brooks	August 13, 1981
Mike Canfield	August 5, 1981
Paul A. Chesser	August 13, 1981
Blanco Drummond	August 12, 1981
John Harding	July 23, 1981
Thomas I. Herlihy	August 3, 1981
Roger A. Johnson	August 11, 1981
Garrett T. Kirwin	August 7, 1981
Jack Maul	July 23, 1981
Dennis E. Tiede	July 21, 1981
Robert N. Torres	July 24, 1981
Melvin A. Winkelman	August 14, 1981
John J. Zelloe	August 11, 1981

J. E. McNeil

J.E. McNeil
Gaffney, Anspach, Schember,
Klimaski & Marks, P.C.
1712 N Street, N.W.
Washington, D.C. 20036

Attorney for Plaintiffs

Certificate of Service

I certify that the foregoing Notice of Filing of certain depositions was personally served this 30th day of November, 1981, on Laura Bonn, Assistant Corporation Council,]4th and E Streets, N.W., Washington, D.C., 20004 and David H. White, Civil Division, Department of Justice, Washington, D.C., 20530.

_____

J.E. McNeil

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	CIVIL ACTION NO. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM ON BEHALF OF DEFENDANT JONES RELATING TO THE TIMELINESS OF FILING A THIRD PARTY COMPLAINT

At the pre-trial conference of this case on November 20, 1981, undersigned counsel made a limited appearance on behalf of defendant Courtland Jones in order to support the Motions, previously filed by David H. White, for Reconsideration of the Court's Order of October 29, 1981 (denying Jones' motion to dismiss) and, presumably in the alternative, for a separate and later Trial of Claims against him.

The Court directed counsel's attention to that part of its ruling of October 29 wherein it was stated that defendant Jones:

> ". . .will suffer no prejudice if plaintiffs are precluded from raising any claim against him not stemming from acts already involved in the litigation against other defendants who are represented by Jones' counsel, and who were with Jones in the Federal Bureau of Investigation at the time his allegedly unlawful conduct."

The Court inquired as to how, under the circumstances of so limiting the claims against Jones, he could be prejudiced by going to trial on November 23, 1981, with Mr. White representing him. Undersigned counsel raised several areas of potential prejudice including the fact that Jones has had no opportunity to avail himself of the provisions of Rule 14, Federal Rules of Civil Procedure, and bring in appropriate third party

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LINGTON VA 22201
(703) 525-2260

defendants, if any, including specifically the United States. In this regard, counsel advised the Court that, as a result of a brief and cursory conference with Jones, his defense in this case is not only that "he did nothing for which he is liable in damages to the plaintiffs" but also that "whatever he did was within the scope of his former employment by the United States." This is, in short, a classic case for the application of Rule 14(a). The Court directed counsel to provide it with authority relating to the timeliness of Jones attempting to bring in such a third part as the United States.

The authority is Rule 14 itself. It provides that:

> "at any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him."

The Rule further provides that:

> "The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than 10 days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action."

Counsel respectfully submits that leave of Court would be summarily granted Jones to serve such a complaint in the circumstances of his very late involement in this case. It would appear though that leave is not required and that under the rule Jones may file as of right.

Simply put, Jones has not yet filed his answer and he is not yet out of time to do so. He has ten days thereafter within which to file the complaint. It is doubtless true that an absurd result obtains here if Jones takes advantage of the rule in this fashion. Not only can he file his answer

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LINGTON, VA 22201
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and bring in the United States on the morning trial commences but he can do so no less than ten days after the trial has commenced. The problem, however, lies not with the "timeliness" of Jones' answer and third-party complaint. Plainly these are timely. The problem lies with the "timeliness" of the trial of Jones given plaintiffs' inexcusable lateness in naming him a defendant and their insistence in proceeding against him on November 23, 1981, before he has had any opportunity to prepare for trial.

As a late-comer to this case counsel has no desire to plunge the proceedings into a procedural morass. It represents, however, that it will in absolute good faith file a third-party complaint against the United States on behalf of Jones as soon as is practicable.

Respectfully submitted,

COHEN, GETTINGS & SHER

/Brian P. Gettings/
Brian P. Gettings, Esquire

COHEN, GETTINGS & SHER
1400 North Uhle Street
Suite 500
Arlington, Virginia 22201
(703) 525-2260

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 1981, I hand-delivered a copy of the within pleading to Daniel Schember, counsel for the plaintiff, and David H. White, Attorney, Department of Justice.

/Brian P. Gettings/
Brian P. Gettings, Esquire

OHEN, GETTINGS
& SHER
SUITE 500
1400 N. UHLE STREET
RLINGTON VA 22201
(703) 525-2260

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

MOTION BY DEFENDANT COURTLAND J. JONES FOR AN ENLARGEMENT OF TIME WITHIN WHICH TO ANSWER THE AMENDED COMPLAINT

Defendant Courtland J. Jones, through his undersigned counsel and pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, moves for an enlargement of time within which to answer, or otherwise plead in response to, the Amended Complaint, the enlargement to continue until five days following resolution of the pending motion by defendant Jones for reconsideration of the Order of October 29, 1981, and the motion of present counsel to withdraw.

In support of this motion, the following averments are made:

1. Defendant Jones was served with the Summons and Amended Complaint on June 21, 1981, and he moved to dismiss on August 20, 1981.

2. On October 29, 1981, this Court denied the motion to dismiss.

3. On November 17, 1981, defendant Jones moved for reconsideration of the Order of October 29, 1981. On the same date, his counsel, David H. White, moved to withdraw as counsel for defendant Jones in the event the motion for reconsideration is denied.

4. In light of the pending motion to withdraw, undersigned counsel believes it would be inappropriate for him to prepare an Answer on behalf of defendant Jones until such time as the issue of representation has been resolved. Undersigned attorney David H. White has advised attorney Brian P. Gettings of this matter, and Mr. Gettings agrees with this motion for enlargement. Mr. Gettings has been retained by defendant Jones to represent his interests in connection with the motion to withdraw.

Respectfully submitted,

J. PAUL McGRATH
Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge/dbw
BROOK HEDGE

David H. White
DAVID H. WHITE

Attorneys, Department of Justice
Room 3339, Civil Division
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Washington, D.C. 20530
Telephone: (202) 633-4269

Attorneys for Defendant
Courtland J. Jones

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

O R D E R

This matter having come before this Court on Defendant Courtland J. Jones' motion for an enlargement of time within which to Answer the Amended Complaint, and the Court being fully advised in the premises, it is this _____ day of November, 1981,

ORDERED that the motion for enlargement be, and hereby is, granted.

_____
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing MOTION BY DEFENDANT COURTLAND J. JONES FOR AN ENLARGEMENT OF TIME WITHIN WHICH TO ANSWER THE AMENDED COMPLAINT, and proposed ORDER.

Herb Semmel, Esquire
Urban Law Institute for the
Antioch School of Law
1624 Crescent Place, N.W.
Washington, D.C. 20009

Anne Pilsbury, Esquire
17 Danforth Street
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Laura Bonn, Esquire
Assistant Corporation Counsel
District Building
14th and E Streets, N.W.
Washington, D.C. 20004

Daniel Schember, Esquire
Gaffney, Anspach, Schember,
Klimaski & Marks, P.C.
1712 N Streets, N.W.
Washington, D.C. 20036

DAVID H. WHITE
Attorney, Department of Justice
Washington, D.C. 20530

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs.	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

EXHIBITS

EXHIBITS

EXHIBIT	DESCRIPTION
A	Airtel dated August 25, 1967 to SAC, Albany from Director, FBI re: COUNTERINTELLIGENCE PROGRAM - Black Nationalist - Hate Groups Internal Security (copy to WFO)
B	LHM dated February 29, 1968 to W.C. Sullivan from G.C. Moore re: Counterintelligence Program Black Nationalist - Hate Groups Racial Intelligence and attached airtel dated March 4, 1968 (copy to WFO)
C	LHM dated May 9, 1968 to W.C. Sullivan from C.D. Brennan re: Counterintelligence Program Internal Security Disruption of the New Left and attached airtel dated May 10, 1968 (copy to WFO)
D	Book II, Final Report of the Select Committee to Study Governmental Operations with respect to Intelligence Activities, United States Senate, dated April 26, 1976
E	LHM dated August 4, 1969 to Director, FBI from SAC, WFO re: COINTELPRO-New Left
F	LHM dated June 26, 1970 to Director FBI from SAC, WFO re: COINTELPRO-New Left
G	LHM dated August 20, 1970 to C.D. Brennan from G.C. Moore re: Counterintelligence Matters New Left - Black Panther Party and attached NY Times Article
H	Airtel (and copy) dated September 9, 1970 to SAC, WFO from Director, FBI re; Counterintelligence Program Black Nationalist Hate Groups Racial Intelligence-Black Panther Party Counterintelligence Program New Left Security Matter
I	LHM dated September 23, 1970 to Director, FBI from SAC, WFO re: Counterintelligence Program Black Nationalist Hate Groups Racial Intelligence - Black Panther Party Counterintelligence Program New Left Security Matter
J	LHM dated March 25, 1968 to W.C. Sullivan from G.C. Moore re: Counterintelligence Program Black Nationalist - Hate Groups Racial Intelligence (Washington Spring Project)
K	LHM dated May 14, 1968 to W.C. Sullivan from G.C. Moore re: Counterintelligence Program Black Nationalist - Hate Groups Racial Intelligence (Poor People's Campaign) and attached "press release".
L	LHM dated June 5, 1968 to W.C. Sullivan from G.C. Moore re: Counterintelligence Program Black Nationalist - Hate Groups Intelligence (Poor People's Campaign) and attached "press release"
M	Airtel dated January 9, 1969 to Director, FBI from SAC, WFO re: COINTELPRO-New Left and attached housing form

EXHIBIT	DESCRIPTION
N	Airtel dated January 10, 1969 to SAC, WFO from Director, FBI re: COINTELPRO-New Left
O	Airtel dated January 21, 1969 to Director, FBI from SAC, WFO re: COINTELPRO-New Left
P	LHM dated January 21, 1969 to SAC, WFO from S. Wilfred R. Schlarman
Q	Letter undated to Abraham Bloom from Rev. Moore and attached statement
R	WFO file report for Arthur Waskow
S	Airtel dated August 21, 1969 to SAC, WFO (and seven other cities) from Director, FBI re: COINTELPRO-New Left BUDED: 8/29/69
T	Airtel dated August 22, 1969 to Director, FBI from SAC, WFO re: COINTELPRO-New Left BUDED: August 29, 1969
U	Airtel (and copy) dated September 24, 1969 to Director, FBI from SAC, WFO re: COINTELPRO Black Nationalist-Hate Groups Racial Matters (Black United Front)
V	Airtel (and copy) dated October 1, 1969 to Director, FBI from SAC, WFO re: COINTELPRO Black Nationalist Hate Groups Racial Matters (Black United Front) and two attached "press releases"
W	Airtel dated October 10, 1969 to Director, FBI from SAC, WFO re: COINTELPRO Black Nationalist-Hate Groups Racial Matters (Black United Front)
X	LHM dated October 10, 1969 to Director, FBI from SAC, New York re: COINTELPRO-New Left and attached flyer
Y	Copy of LHM dated October 15, 1969 to SAC, New York from Director, FBI re: COINTELPRO-New Left
Z	Copy of LHM dated October 24, 1969 to SAC, WFO from SAC, New York re: COINTELPRO-New Left
AA	LHM dated September 5, 1969 to W.C. Sullivan from C.D. Brennan re: Counterintelligence Program New Left
BB	LHM dated October 9, 1969 to Director FBI from SAC, WFO re: COINTELPRO-New Left SM and attached "newsletter"
CC	LHM dated October 24, 1969 to Director, FBI from SAC, WFO re: COINTELPRO-New Left
DD	Copy of LHM dated November 3, 1969 to SAC, WFO from Director, FBI re: COINTELPRO-New Left SM
EE	LHM dated December 4, 1969 to Director, FBI from SAC, WFO re: COINTELPRO-New Left
FF	LHM dated 2/3/70 to Director, FBI from SAC, New York re: COINTELPRO-New Left and attached "memo"
GG	LHM dated 2/13/70 to Director, FBI from SAC, New York

re: Socialist Workers Party Distruption [sic] Program IS-SWP and attached leaflet

HH Affidavit from Robert Wall

II Excerpts from the domestic surveillance file of Sammie A. Abbott

JJ Excerpts from the domestic surveillance file of Abraham Bloom

KK Excerpts from the domestic surveillance file of Reginald H. Booker

LL Excerpts from the domestic surveillance file of the Reverand David Eaton

MM Excerpts from the domestic surveillance file of Tina Hobson

NN Excerpts from the domestic surveillance file of Richard P. Pollock

OO Excerpts from the domestic surveillance file of Washington Area Women Strike for Peace

PP Excerpts from the domestic surveillance file of the Washington Peace Center

QQ Excerpts from the domestic surveillance file of Arthur I. Waskow

RR Davidov v. Honeywell, Inc., 4-77 Civ. 152

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

EXHIBITS TO PLAINTIFFS' PRE-TRIAL BRIEF

EXHIBITS

EXHIBIT	DESCRIPTION
1	LHM dated January 21, 1969 to Director, FBI from SAC, New York re: COINTELPRO - NEW LEFT
2	Copy of LHM dated January 24, 1969 to SAC, New York from Director, FBI re: COINTELPRO - NEW LEFT
3	LHM dated March 14, 1969 to Director, FBI from SAC, New York re: SOCIALIST WORKERS PARTY, IS - SWP, DISRUPTION PROGRAM
4	Copy of LHM dated October 16, 1968 to SAC, WFO (100-44757) from Director FBI (100-449698) re: COINTELPRO - NEW LEFT
5	Copy of LHM dated April 27, 1971 to Mr. W.C. Sullivan from Mr. C.D. Brennan re: Counterintelligence Programs (COINTELPROS)1 - Internal Security - Racial Matters
6	LHM dated September 7, 1967 to Director, FBI (100-3-104-53) from SAC, WFO (100-421-FF) re: Communist Party, USA & Special Operations Counterintelligence Program
7	Airtel dated November 7, 1968 to Director, FBI (105-174254) from SAC, WFO (100-48466) (P) re: Counter-intelligence and Special Operations (Nationalities Intelligence)
8	Airtel dated November 18, 19 to Director, FBI from SAC, WFO re: Women Strike for Peace Delegation to Soviet Union, 11/11/68 - 12/2/ Information Concerning
9	Airtel dated to Director, FBI from SAC, WFO re: Women Strike for Peace Delegation to Soviet Union, 11/11/69 - 12/2/68 Information Concerning
10	Airtel dated February 10, 1969 to Director, FBI from SAC, WFO re: Women Strike for Peace Delegation to Soviet Union, 11/11 - 12/2/68 Info concerning - IS
11	Airtel dated March 20, 1969 to Director, FBI from SAC, WFO re: Women Strike for Peace Delegation to Soviet Union, 11/11 - 12/2/68 Information Concerning - IS
12	Airtel dated April 11, 1969 to Director, FBI (62-107350) from SAC, WFO (100-39566) (P) re: Women Strike for Peace (WSP) IS - C
13	Airtel dated May 9, 1969 to Director, FBI (62-107350) from SAC, WFO (100-39566) re: Women Strike for Peace (WSP) IS-C
14	Documents produced by Mostrom concerning electronic overhears of plaintiffs
15	Airtel dated July 17, 1970 to Director, FBI from SAC, WFO re: COINTELPRO - New Left
16	LHM dated December 15, 1970 to Director, FBI from SAC, WFO re: COINTELPRO - New Left
17	Informant Report dated May 4, 1972 to John L. Stanley

	18	File Report concerning Waskow
	19	LHM dated February 14, 1973 to SAC, WFO from William T. Tucker re: Richard Pollack
	20	LHM dated December 3, 1969 to SAC, WFO from Hilmer H. Krebs re: Emergency Committee on the Transportation Crisis
	21	LHM dated January 14, 1970 to SAC, WFO from SA Hilmer H. Krebs re: Emercency Committee on the Transportation Crisis
	22	LHM dated October 31, 1969 to SAC, WFO from SA Stephen B. King re: Justine Clapp Lower
	23	Teletype dated October 21, 1969 to Director, FBI and SACS Chicago and New York from SAC, WFO
	24	Report, MPD Internal Investigation of Intelligence Division Activities, 1975
	25	Report, MPD Internal Investigation of Intelligence Division Activities, 1975
	26	LHM dated January 17, 1973 to Director, FBI from SAC, WFO re: Samuel Abdollah Abbott, aka
	27	Informant Report dated December 3, 1965 to Washington Field from Joseph E. Keller
	28	Copy of LHM dated August 2, 1972 to Acting Director FBI from SAC, WFO re: Richard Phillip Pollock
	29	LHM dated January 30, 1969 to Director, FBI from SAC, WFO re: Arthur Irwin Waskow aka Arthur Irvin Waskow
	30	Report to the President by the Commission on CIA Activities within the United States dated June 1975

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al	:	
Plaintiffs,	:	
v.	:	Civil Action NO. 76-1326
JERRY WILSON, et al	:	
Defendants.	:	

VOIR DIRE

1. I will read the names of the District of Columbia defendants then I will ask any member of the panel who knows any one of them to please so indicate.

2. I will read the names of the defendants and then I will ask any member of the panel who knows any one of them to please so indicate.

3. Is there any member of the jury panel who is now or was formerly employed by the District of Columbia, or who has some member of their immediate family employed or formerly by the District of Columbia?

4. The evidence in this case is likely to indicate a conflict between the testimony of certain police officers and FBI agents and certain other person. Is there anyone on the jury panel who feels that police officers because of their position, are any less likely to be telling the truth than persons who are not police officers.

5. Has anyone on the jury panel or any member of your immediate family had any personal experience in which you have suffered any personal injury or any property damage in connection with any demonstrations or civil disorders or riots of any kind at any time?

6. Are any of you lawyers or law students, or have any of you ever studied law in the past?

7. At the end of the next series of questions I am going to ask that each pweson who has an affirmative answer to one or more of them stand and come to the bench.

Again, let me say that these questions are not intended to pry into your personal background, background, but to assist us in choosing a fair and impartial jury panel.

(a) Have any or you, or your colse family or friends, ever been the victim of a crime?

(b) Have any of you, or your relatives or friends, ever been a witness to an alleged criminal offense?

(c) Have you, or any members of your family ever been arrested or convicted of a criminal offense.

If any of you have a "yes" answer to any or all the questions, please stand and form a line, and you will be permitted to approach the bench and answer in privacy.

8. At the end of the next series of questions I am going to ask that each person who has an affirmative answer to one or more of them stand and come to the bench.

(a) Have any of you or your close family or friends ever been involved in a civil suit against the District.

(b) Have any of you or your close friends or family ever filed a claim against the District.

(c) Have any of you or your close family or friends ever had any contact with the District or the Police Dept. Which you consider particularly favorable or unfavorable.

I certify that a copy of the foregoing Notice of Filing and Plaintiffs' Additions and Amendments to Voir Dire Questions and Request for Additional Peremptory Challenges were personally delivered to David White, counsel for federal defendants and Laura Bonn, counsel for D.C. defendants, this 20th day of November, 1981.

J.E. McNeil

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-]326

NOTICE OF FILING

The transcripts of the following depositions were filed with the Court this 20th day of November, 1981.

Name	Date
William H. Bailey	July 2], 198]
Dolores Binsted	May 27, 1981
James Binsted	May 27, 1981
Roger O. Day	July 1, 1981
Albert W. Ferguson	July 7, 1981
Dixie Gildon	May 26, 1981
Edward Joseph Jagen	May 26, 1981
John W. Mahaney	May 28, 1981
Herman C. Oglesby	July 21, 1981
David Ryan	June 29, 1981
Cristopher J. Scrapper	May 29, 1981
George R. Suter	July 7, 1981
Robert L. Zink	July 1, 1981

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY V. WILSON, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' PROPOSED JURY INSTRUCTIONS

PLAINTIFFS' JURY INSTRUCTION NO. 1
(Introductory Instruction)

Plaintiffs in this case seek money damages from the defendants for violation of their civil and constitutional rights. I shall explain first to you the elements of each of these claimed violations, and then I shall instruct you on the law relating to damages.

Plaintiffs have made several different claims against the various defendants, and it is not necessary to plaintiffs' recovery for you to find that all of plaintiffs' claims have been proved by a preponderance of the evidence -- as I will explained that term to you -- then plaintiffs are entitled to recovery of money damages against any or all of the defendants whom you find to have been responsible for the actions upon which such claims are based.

Dellums v. Powell (D.D.C., Civ. Action No. 2271-71)

PLAINTIFFS' JURY INSTRUCTION NO. 2

(Multiple Plaintiffs)

D.C. Bar form book instruction 4-1, changing the word "two to "nine"

PLAINTIFF'S JURY INSTRUCTION NO. 3

(Evidence in the case)

D.C. Bar form book instruction 2-1

PLAINTIFF'S JURY INSTRUCTION NO. 4

(Function of the Court)

D.C. Bar form book instruction 1-1

PLAINTIFF'S JURY INSTRUCTION NO. 5

(Function of the Jury)

D.C. Bar form book instruction 1-2

PLAINTIFF'S JURY INSTRUCTION NO. 6

(Burden of Proof)

D.C. Bar form book instructions 2-8

PLAINTIFFS' JURY INSTRUCTION NO. 7

(Inferences)

You are to consider only the evidence in the case. But in your consideration of the evidence you are not limited solely to the statements of the witnesses. You are permitted to draw from facts which you find have been proved, such reasonable inferences as seem justified in the light of your own experience. An inference is a deduction or conclusion which reason and common sense lead you to make from facts which have been proved. In other words, if you find that one or more facts have been proved that make you believe that another fact which has not been proved is nevertheless more likely to be true than not to be true, you are permitted to infer that that fact is true.

D.C. Bar form book instruction 2-2 with an additional last sentence.

PLAINTIFFS' JURY INSTRUCTION NO. 8

(Testimony of Law Enforcement Officers)

In this case, many of the defendants are or were either police officers or employees of the Federal Bureau of Investigation. The testimony of a law enforcement official is entitled to no special or exclusive sanctity. An official who takes the witness stand subjects his testimony to the same examination and the same tests that any other witness does, and in the case of such officials you should not believe them merely because they are law enforcement officials. You should recall their demeanor on the stand, their manner of testifying, the substance of their testimony, and weigh and balance it just as carefully as you would the testimony of any other witness. People employed by the government, including law enforcement officials, do not stand in any higher station in the community than other persons and their testimony is not entitled to any greater weight.

PLAINTIFFS' JURY INSTRUCTION NO. 9

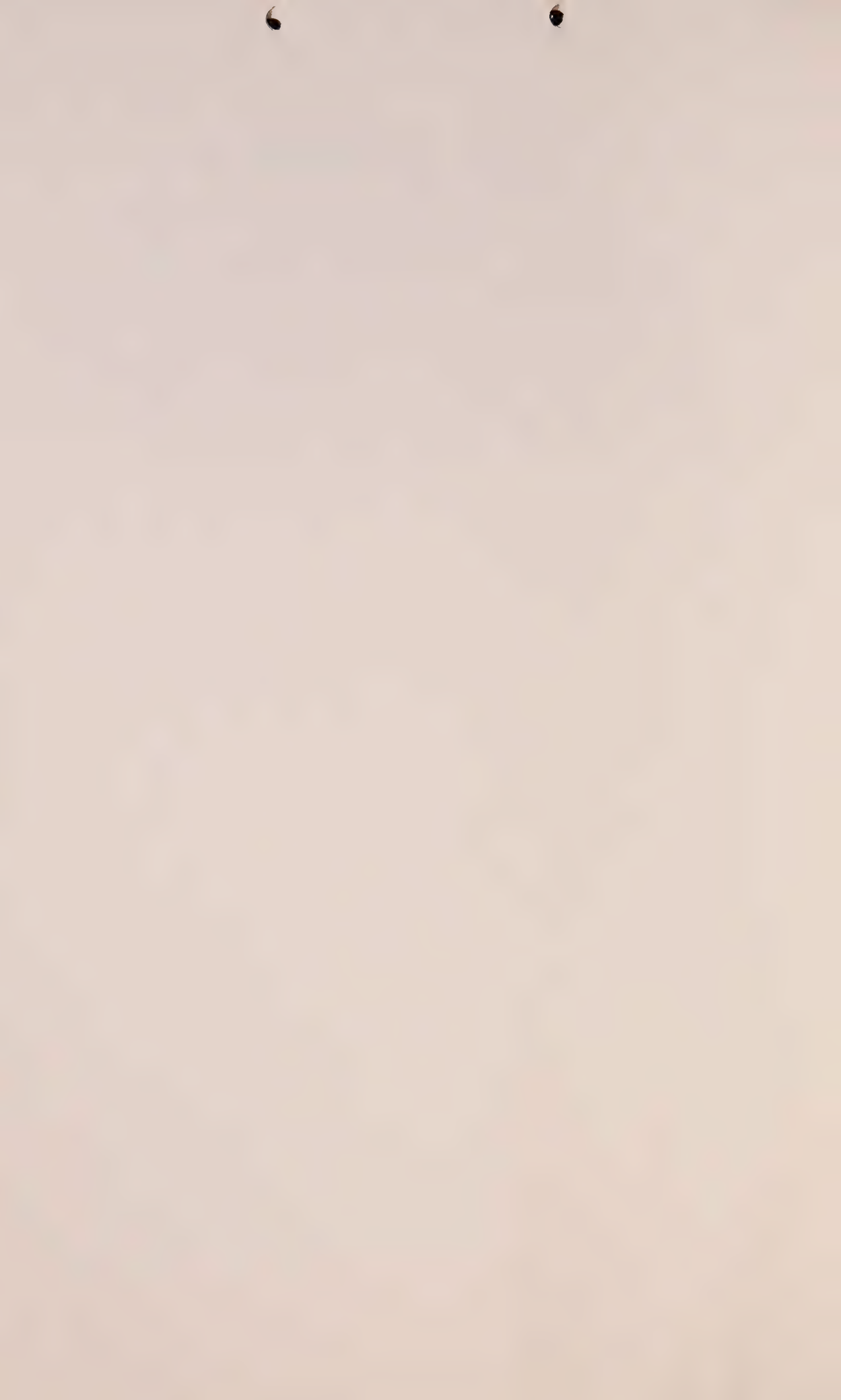
(Missing Witness)

D.C. Civil Jury Instruction No. 3-6.

PLAINTIFFS' JURY INSTRUCTION NO. 10

(Specific Intent)

It is not necessary to find that the defendants had any specific intent to deprive the plaintiffs of their constitutional rights in order to find in favor of the plaintiffs. The plaintiffs are entitled to relief if the defendandt intended the actions which resulted in a violation of the plaintiffs' rights. Gomez v. Toledo, 100 S.Ct. 1920 (1980); Monroe v. Pope, 365 U.S. 167 (1961); Pierson v. Ray, 386 U.S. 547 (1967).



PLAINTIFFS' JURY INSTRUCTION NO. 11

(Introduction)

Federal law provides that any individual may seek redress in this Court, by way of money damages and by injunctive relief, against any government body which deprives a citizen of rights guaranteed to them by the United States constitution. In this case, the plaintiffs have charged that the individual defendants acting in their capacity as agents of the Federal Bureau of Investigation and the District of Columbia Metropolitan Police Department have conspired to deprive the plaintiffs of their constitutional rights. I will instruct you as to the elements of each alleged violation and you must determine, as I have previously instructed you, the liability of each defendant with respect to the plaintiffs.

PLAINTIFFS' JURY INSTRUCTION NO. 12

(Supervisory Liability)

Some of the defendants in this case are supervisory officers who did not personally commit the specific acts alleged to violate the plaintiffs' constitutional rights. Supervisory officers may be held liable for a violation of the plaintiffs' rights if their own conduct was a proximate cause of the violation.

A supervisory officer subjects a person to a violation of his constitutional rights if he (1) actually orders or commits such a violation (2) allows another's affirmative act, or (3) omits to do something which he is required to do, and that act or omission causes the violation of which the plaintiffs have complained. Personal participation in the immediate act which violated the plaintiffs' rights is not required. It is sufficient if the supervisor sets in motion or allows a substitute to set in motion in his place a series of acts by others, or knowingly refuses to terminate a series of acts by others which he knows or reasonably should know would cause others to inflict the constitutional injury. I will instruct you further with respect to each of the alleged violations. Lessman v. McCormick, 591 F. 2d 605 (10 Cir. 1979); Maiorana v. MacDonald, 596 F.2d 1072, 1077 (1st Cit. 1979); Johnson v. Duffy, 588 F.2d 740, 743-744 (9th Cir. 1978); McClelland v. Facteau, 610 F.2d 693, 695-696 (10th Cir. 1979); Sims v. Adams, 537 F.2d 829 (5th Cir. 1976); Hengel v. Gerstein, 608 F.2d 654 (5th Cir. 1979).

PLAINTIFFS' JURY INSTRUCTION NO. 13
(Conspiracy-Definition)

As a part of their theory of liability plaintiffs have alleged that the federal defendants have engaged in a conspiracy and that the D.C. defendants have engaged in either the same conspiracy or a separate conspiracy, each of which were to violate the plaintiffs' constitutional rights.

A conspiracy exists when two or more persons reach an understanding to accomplish some unlawful purpose, or to accomplish some lawful purpose by unlawful means. It is in essence a combination to disobey or disregard the law. The understanding between the members need not be an express or formal agreement. Thus, a conspiracy is seldom able to be proved by direct evidence. Rather, the existence of a conspiracy may be inferred from a series of events and may be proved by circumstancial evidence.

Although a common design is the essence of conspiracy, the law does not demand proof that each conspirator knew the exact limits of the illegal plan, or the identity of all the parties in it. It does require that there be within each conspiracy, a single plan, the essential nature and general scope of which is known to each person who is to be held responsible for its consequences. It is not necessary for the plaintiff to prove that the defendants came together at a specific time and, in so many words, agreed upon the matter. If it is proved that the defendants worked toward the same goal, one performing one part and another performing another part, you will be justified in concluding that they are engaged in a conspiracy to reach the goal.

Adickes v. S. H. Kress Co., 398 U.S. 144 (1970); Hampton v. Hanrahan, 600 F2d. 600 (7th Cir. 1979), rev'd in part on other grounds, 100 S.Ct. 1987 (1980); Hoffman-LaRoche, Inc. v. Greenberg 447 F.2d 872, 875 (7th Cir. 1971).

PLAINTIFFS' JURY INSTRUCTION NO. 14
(Conspiracy)

In the present case, plaintiffs claim that defendants conspired to prevent them from exercising their first amendment rights of free speech, assembly and association and their fourth and fifth amendment rights of freedom from unreasonable search and seizure, and of due process. If you should find by a preponderance of the evidence that defendants intended to do this, or that defendants intended to accomplish some lawful purpose by such unlawful means, this would constitute the kind of unlawful agreement that is essential to a civil conspiracy. This means that if you should find that the defendants were attempting to accomplish a lawful purpose -- such a to prevent violence at demostrations -- but using unlawful methods or tactics to accomplish that purpose -- such as use of informants or undercover officers to disrupt the lawful activities of the plaintiffs -- such methods or tactics would be clearly unlawful and in violation of basic constitutional rights and would constitute a civil conspiracy.

A conspiracyrequires, in addition to an agreement or understanding, that there be one or more unlawful acts in furtherance of the conspiracy.

Plaintiffs have alleged that there were a great many unlawful acts in furtherance of the conspiracy, including the following: (1) Use of informants or undercover officers to provoke confrontations with the police such as at the Three Sister's Bridge demonstration; (2) Secret preparation of documents by defendants, such as the Head Tax demand letter and the Rational Observer, designed to interfere with plaintiffs' freeedom of association and freedom of speech; (3)Breaking and entering into offices of plaintiffs and organizations in which they were active and removing materials from the offices; (4) Placing plaintiffs'

names on lists of persons to be detained without any notice, redress, or their due process rights and indicating that the purpose of the lists was to target dangerous persons in the event that some "national emergency" was declared; (5) Disrupting the housing arrangments and the peace marshalls' communications before and during the counterinaugural in order to discourage and separate other persons from joining plaintiffs' in exercising their first amendment rights and thereby interfering with plaintiff freedom of assembly and association; (6) Use of warrantless wiretaps and misuse of one-party-consent type electronic surveillance.

It is not necessary that you find that the defendants committed all of the above acts; if you should find that the defendants committed only one of these acts, that would be enough to meet the requirement that there be one or more overt acts in furtherance of the conspiracy.

PLAINTIFFS' JURY INSTRUCTION NO. 15
(Liability of Co-conspirators)

Each conspirator is responsible for everything done by co-conspirators which follows from the execution of the common design as one of its probable and natural consequences, even though it was not intended as part of the original design. A defendant, therefore, who is proved to be a member of a civil conspiracy is liable for a plaintiff's injuries caused by the conspiracy, even if his own personal acts did not proximately contribute to that injury. In other words, a co-conspirator need not be the person who sent the anonymous letter or wrote it or even approved it or knew about it, if it was a natural and expected act to be taken another conspiractor in light of the conspiracy.

You are further instructed that it is not necessary, in order to establish the liability of a participant in an unlawful conspiracy, to show that he was a party to its contrivance at its beginning. In other words, a conspiracy may start with some participants, then add others as it progresses; if so, the conspirator who becomes a part of the conspiracy at or near the end is just as much responsible for the damage that results as the one in the beginning. The actual time when any of them might have come into the understanding makes no difference. Therefore, if it isshown that the individual who came in at a later date knew of the unlawful design and willfully aided in its execution, he is chargeable with the consequances that flowed from it.

PLAINTIFFS' JURY INSTRUCTION NO. 16
(Joint Liability of Tortfeasors)

Even if you find that there was not sufficient evidence to hold the defendants to have engaged in a conspiracy, you may still find that some of the defendants are liable as joint tortfeasors. Where two or more persons unite in an act which constitutes a wrong to another, intending at the time to commit it, or performing it under circumstances which fairly charge them with intending the consequence which follows, they incur a joint and several liability for the acts of each and all of the joint participants. The law does not require the injured party or parties to establish how much of the injury was done by another. Rather, it permits the injured party to treat all concerned in the injury jointly, and all are liable to respond to the plaintiff in a total sum as damages. All those who actively participate in a wrongful act, by cooperation or request, or who lend encouragement to the wrongdoer, or ratify and adopt his acts for their benefit, are equally liable with him. Express agreement is not necessary, and all that is required is that there should be a common design or understanding, even though it be a tacit one.

Prosser, Law of Torts, §46, 4th Ed. 1971, pp. 291-295.

PLAINTIFFS' JURY INSTRUCTION NO. 17
(Respondeat Superior)

In addition to the individual defendants, the District of Columbia is also charged as a defendant in this case. If you find that any of the individual defendants employed by the District of Columbia violated the constitutional rights of any of the plaintiffs, you must find the municipal corporation liable as well, if you find that the police officers or informants were employed by the District of Columbia and were acting within the scope of their employment. The scope of their employment means that the officer or informant was engaged in police business at the time of the act or occasion. You do not have to decide that the District had ordered or even was aware of, the specific conduct of the officer or paid informant in order to find the District liable. The District will be liable even for the intentional wrongful acts of the officer or informant, if the actions of such individual was not unforseeable given the nature of the police work.

Restatement of Agency Second, §245; Prosser, Law of Torts, 4th Ed. 1971, p.464.

PLAINTIFFS' JURY INSTRUCTION NO. 18
(Statute of Limitations)

This lawsuit was filed July 16, 1976. One of the issues that you must decide in this case is whether the plaintiffs filed their lawsuit within the time period allowed by law. You must make this determination separately for each claim of each plaintiff. The time period allowed by law is three years after the occurrence the acts giving rise to the claim unless the acts were by their very nature secret or the defendants deliberately concealed the acts, or their unlawful character. The following examples illustrate these concepts.

A wiretap is by nature secret. The true identity of an undercove officer or informant may be a matter that has been deliberately concealed. An interview conducted by an FBI agent may have seemed proper and legitimate at the time it occurred, but actually may have been conducted for an unlawful purpose and that purposed may have been concealed.

Where defendants in a civil case have committed acts which are by nature secret, or deliberately concealed their acts, or the unlawful character of their acts, the law states that the three-year time period does not start until plaintiffs actually knew, or reasonable should have known, the material facts establishi the basis of their claims. In such a case the burden of proof is on the defendants to show that, despite the secrecy or concealment, plaintiffs actually knew or reasonably should have known the materia facts more than three years prior to the filing of their claims, in other words, before July 16, 1973.

To "actually know" a material fact means to know it reliably. Suspicion is not enough, no matter how strongly the suspicion is believed. You may not find a plaintiff actually knew a material fact if that plaintiff merely suspected it.

Now, whether a material fact reasonably should be known depends on what other related facts were actually known. A material fact reasonably should have been known only if other related facts were actually known, and that knowledge of those facts combined with the exercise of due diligence would have led reliably to the discovery of the material fact.

PLAINTIFFS' JURY INSTRUCTION NO. 18
(Shift of Burden of Proof)

I previously instructed you that plaintiffs' generally bear the burden of proof. There are some circumstances, however, in which the burden of proof as to some facts shifts to the defendants.

Plaintiffs' claim that the purpose of, or a substantial motive for, defendants' alleged use of informants to gather information was to use that information to formulate plans to disrupt or counteract plaintiffs' exercise of their constitutional rights. If you find that this was the sole motive for defendants' actions then you must conclude that they acted in violation of plaintiffs' rights.

If, however, you find that a purpose of defendants' activities was to disrupt or counteract plaintiffs' exercise of their constitutional rights, but you also find that defendants undertook their activities in part because of other reasons which were lawful, then you must determine if the defendants have produced enough evidence which would establish by a preponderance of the evidence that they would have engaged in the same activities aimed at plaintiffs, to the same degree, as they would have if they had not had an unlawful motive. You must also determine whether it would have been reasonable for defendants to have engaged in the same activities and to the same degree if they had been motivated soley by a lawful purpose. By the same degree, I mean the same nature, scope, and duration. If you find that defendants' activities exceeded the scope of what they would reasonably have done, absent improper motive, then you must find that they acted in violation of plaintiffs' rights.

PLAINTIFFS' JURY INSTRUCTION NO. 19
(Electronic Surveillance)

Plaintiffs claim their right to privacy under the Fourth Amendment to the Constitution was invaded by warrantless wiretaps conducted by the FBI and secret microphone monitoring by the Metropolitan Police Department.

In 1972 it became established in law that warrantless wiretapping of persons who are not agents of a foreign power violates the Fourth Amendment and unlawfully invades the privacy of each person overheard on such a wiretap. If you find that any plaintiff was overheard on such a wiretap and that any defendant participated in approving, installing, or monitoring the wiretap prior to 1972, however, you must also determine whether that defendant had a reasonable basis in fact for believing that then-existing criteria for Attorney-General approval of such wiretaps was met. In order for a warrantless wiretap to be approved by the Attorney General during 1968-1972, facts indicating one of the following had to be present:

1. That it is necessary to protect the nation against actual or potential or any other hostile action of a foreign power;

2. That it is necessary to obtain foreign intelligence information deemed essential to the security of the United States;

3. That it is necessary to protect national security information against foriegn intelligence activities;

4. That it is necessary to protect the United States against the overthrow of the Government by force or other unlawful means; or

5. That it is necessary to protect the United States against a clear or present danger to the structure or the existence of its Government.

If a defendant had a reasonable basis in fact for believing

that the wiretap was justified under one of these criteria, then the defendant is not liable personally for invasion of any plaintiff's privacy as a result of the wiretap. However, if you find that the defendant had no reasonable basis in fact for believing that one of the five criteria was met, then that defendant is liable for any invasion of a plaintiff's privacy as a result of the wiretap, even if the wiretap was approved by the defendant's superiors.

Warrantless electronic interception of communications through use of secret microphones violates the Fourth Amendment and the law of the District of Columbia unless one party to the communication has consented to its interception. The consenting party must actually be a party to the communication intercepted. Consent to the installation of secret microphones at a particular location is not sufficient to render lawfull all resulting interception of communications. Interception of communications to which the consenting party is not actually a party violates the right to privacy of the persons overheard. If you find that any of the defendants monitored or approved the monitoring of microphone transmissions of plaintiffs' conversations when no party of the convesation consented to the monitoring, then you must find that defendant to have violated the plaintiffs' right to privacy.

Hoffa v. U.S., 385 U.S. 293 (1966); Katz v. U.S.,389 U.S. 347 (1967); D.C. Code §23-542(1981 Ed.).

PLAINTIFFS' JURY INSTRUCTION NO. 20 (Violation of First Amendment Rights to Free Expression, Assembly, and Associational Privacy)

In this case plaintiffs claim injury to their rights under the First Amendment to the Constitution. This amendment reads as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

This means that the government may not, except within very narrow limits, interfere with the right of individuals to speak as they please, to assemble with others, and assemble and publicly criticize the government as they please. These are extremely important and precious rights, which are basic and fundamental to our free and democratic form of government. Under our form of government no one -- not even the President himself -- has the right to trample on these rights, and if they do, the submit themselves to liability for money damages to those upon whose rights they trample.

A. Freedom of Speech

Freedom of speech is one of the most basic concepts in the entire constitution. It is intended primarily to protect minority views. It is the very expression of views with respect to controversial political issues that most requires the protection of this amendment. Freedom to express differing opinions is not limited, under the constitution, to things which do not matter much, but applies equally to things which touch the heart of our government and social order. A function of free speech is to invite dispute, and it may best serve its high purpose when it brings about a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.

Freedom of speech means the right to express attitudes of defiance or even contempt toward the government. We have made a national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open, and that it may well

include vehement, caustic, and sometimes unpleasantly sharp attacks on government. It may include advocacy that the government should be overthrown, even by force and violence. Only if such speech creates a clear and present danger of inciting the audience to break the law, then and there, is the advocacy not protected by the constitution.

The government may never take action for the purpose of disrupting, inhibiting, counteracting, or preventing constitutional protected speech.

Sometimes government action not specifically intended to disrupt, inhibit, counteract or prevent speech, nonetheless has that effect. Whether such action violates the constitution depends on whether the purpose of the government action is legitimate and substantial, and whether the action taken is limited to that reasonably necessary to accomplish that purpose. Only government action confined within these limits is permissible. If the government action exceeds these limits, that action violates the first amendment.

Plaintiffs claim defendants acted for the purpose of disrupting or counteracting their freedom of speech, or that defendants' acts, if not so motivated, exceeded permissible limits. If you find either is the case you must determine that the defendants involved violated plaintiffs' right to free speech.

B. Associational Privacy

The first amendment also embraces the right to associate for lawful ends, and to do so privately, without unwarranted intrusion The right of associational privacy includes the right to meet privately with others to discuss politics and to plan lawful group activities. The right of associational privacy embraces the right to keep private the names of the members or associates of the group.

The right of associational privacy is not absolute. The principles defining its scope are analogous to those governing

freedom of speech. The government may never take action for the purpose of invading associational privacy.

Furthermore, government action having the unintended effect of invading associational privacy is legitimate only if it serves a substantial legitimate purpose and is limited to that reasonably necessary to accomplish this purpose. Government action exceeding these bounds violates the first amendment right of associational privacy. It is for you to determine whether defendants committed acts exceeding these bounds and invading plaintiffs' associational privacy.

C. Freedom of Assembly

The right of peaceful assemblage is intended to guarantee the rights of people to associate together and to advocate and promote legitimate political or social action, no matter how controversial. Peaceful, orderly expressions of views, through marches, demonstrations, or otherwise, cannto be prohibited or otherwise interfered with, merely because the views expressed may be so unpopular at the time as to stir the public to anger, or invite dispute. Of course, the right to assemble peaceably to discuss national issues includes the right not to be arrested or assaulted by government agents for excersing such privilege. It includes the right not to have the assembly or arrangements for it disrupted by government agents. It also includes the right to be free of government retaliation for peacefully assembling and to be free from government intimidation of those desiring to peacefully assemble.

If you find defendants acted for the purpose of deterring, counteracting, disrupting, or punishing plaintiffs' efforts to plan, carry out, or obtain the attendance of others at an assembly planned to be peaceful, then you must find defendants violated plaintiffs' right of peaceable assembly, unless of course you find that a plaintiff attended the assembly and personally did not remain peaceful.

If you find defendants did not act for the prupose of deterring, counteracting, disrupting, or punishing peaceful assembly, but took action that had that effect, you must determine whether the government's action was for a substantial legitimate purpose and was limited to that reasonably necessary to accomplish that purpose. If it was not then again you must find defendants to have violated the constitution.

Brandenburg v. Ohio, 395 U.S. 444 (1969); Buckley v. Valeo, 424 U.S.1 (1976); NAACP v. Alabama, 357 U.S. 449 (1958); Dellums v. Powell, 566 F.2d 167 (D.C. Cir. 1977).

PLAINTIFFS' JURY INSTRUCTION NO. 21
(Personal Privacy)

Plaintiffs claim infringement of their personal, as well as associational privacy. The right to personal privacy encompasses the right to be free from wrongful intrusion by the government into one's private activities. Public disclosure of an individual's private affairs, about which the public has no legitimate concern, is an invasion of privacy. However, where the information was obtained by improperly intrusive means, public disclosure is not necessary to complete the wrong. The plaintiffs allege that the defendants intruded upon their privacy by using informants or undercover officers to learn plaintiffs' political beliefs and to gather information concerning their personal, nonpolitical activities.

If you find that the defendants did so, and did so for the purpose of invading the plaintiffs' privacy, or for another illegitimate purpose, then you must find that defendants violated plaintiffs' right to privacy.

If you find the defendants so used undercover officers or informants, but did so for a substantial, legitimate purpose, then you must determine whether the defendants' act were reasonably limited to those necessary to accomplish that purpose, or whether they exceeded the bounds of reasonable necessity. If you determine defendants' acts exceeded the bounds of reasonable necessity, then you must determine that they violated plaintiffs' right to personal privacy.

Whalen v. Roe, 429 U.S. 589 (1977); Griswold v. Connecticutt, 381 U.S. 479 (1965).

PLAINTIFFS' JURY INSTRUCTION NO. 22
(Compensatory Damages)

If you should find the defendants violated plaintiffs' constitutional rights,you must determine the amount of damages to which they are entitled for any violation.

There are no strict mathematical formulas for the measurement or evaluation of the loss of constitutional rights. Compensation for denial of First amendment rights should not be extravagant nor miserly; it is in the public interest that there be a reasonably open approach to fair compensation for denial or curtailment of a First Amendment right.

Tatum v. Morton, 562 F.2d 1279 (D.C.Cir. 1977).

PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 23

(Mental Distress from violation of First Amendment rights and invasion of privacy)

You are instructed that the plaintiffs are entitled to compensatory damages for any mental distress they may have suffered as a result of defendants' actual interference with their First Amendment rights should you find such interference did occur.

If you also find that the plaintiff's privacy was invaded and that the invasion was carried out in a manner that violated the Fourth Amendment, you may award additional damages for mental distress caused by this invasion of privacy.

PLAINTIFFS' JURY INSTRUCTION NO. 24
(Punitive Damages)

You may also decide whether the plaintiffs are entitled to the award of any punitive damages. The function of punitive damages is to punish the defendants for malicious conduct and to deter similar conduct by others. Whether you decide to award any punitive damages should be based on whether you find that the defendants acted willfullly, deliberately, maliciously, or with reckless disregard of the plaintiffs' constitutional rights. If you find that they have done one of those things, then you should award punitive damages.

Whereas compensatory damages are to compensate the plaintiffs for the injuries they actually suffered, punitive damages are to punish the defendants and should reflect your belief about the maliciousness or recklessness of the defendants' acts and motives.

Cochetti v. Desmond, 572 F.2d 102, 105-6 (3rd Cir. 1978); Stolberg v. Board of Trustees, 474 F.2d 485 (2d Cir. 1973); Adickes v. S. H. Kress & Co., 398 U.S. 144, 234 (1970)(Brennan,J., concurring); Guzman v. Western State Bank, 540 F.2d 948, 953 (8th Cir. 1976); Basista v. Weir, 340 F.2d 74 (3d Cir. 1965).

PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 25

(General instruction on good faith or qualified immunity defense)

The defendants claim that they cannot be held liable because they acted in good faith and with the belief that their actions were lawful. In detemining whether to accept or reject this defense, you must decide whether, given all the evidence, defendants could have held, in good faith, the sincere and reasonable belief that their actions were lawful. Many factors determine good faith and what, under these circumstances, would constitute a reasonable belief on the part of a defendant that he or she was acting lawfully. Among these factors are the nature of the activities engaged in by plaintiffs in the exercise of their First Amendment rights, the state of the law as to those rights at the time defendants were engaged in the challenged activities, and, finally, the nature of those activities themselves.

You are instructed, however, that a defendant cannot be found to have acted in good faith and with a reasonable belief that his or her activity was lawful if that defendant committed any act that he knew or reasonably should have known would violate a plaintiff's constitutional rights. The defendants either knew or should have known that the activities of the plaintiffs described by the evidence in this case were protected by the First Amendment and that it was then clearly established that these activities were so protected. The defendants also knew or should have known that to enter someone's premises and take material without a court order was a violation of Fourth Amendment rights and those rights were clearly established.

You are further instructed that a defendant cannot be found to have acted in good faith and with a reasonable belief that his or her activity was lawful if you determine that the defendant acted either with malicious intention, or in ignorance

of or with actual disregard for settled, indisputable law.

Authority: Wood v. Strickland, 420 U.S. 308 (1975); Bivens v. Six Unknown Named Agents, 456 F.2d 1339 (2d Cir. 1972).

PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 26

(General instruction on good faith or qualified immunity defense: scope and nature of official's responsibilities)

Under certain circumstances government officials are shielded from liability for otherwise unlawful acts on the ground that they acted in good faith and with a sincere and reasonable belief that their actions were lawful. Not all officials, however, are entitled to such protection.

The defendants here claim that they are. Before determining whether they acted in good faith and with a sincere and reasonable belief that their actions were lawful, you must decide whether or not the jobs held by these defendants were of the type that entitles them to rely on such defense.

The defense is available only to those officials who in the performance of their duties are required to exercise their discretion, make decisions involving the weighing of many factors and consistently have to make such decisions under circumstances requiring prompt action, and who engage in the formulation of long-term policy.

If you find that any of the defendants here were not required to perform such tasks in conjunction with their jobs, you are instructed that the defense of good faith or qualified immunity cannot be invoked by that defendant and you must then, as to each such defendant, determine only whether that defendant committed any act in violation of a plaintiff's constitutional or other rights.

Authority: Wood v. Strickland, 420 U.S. 308 (1975); Scheuer v. Rhodes, 416 U.S. 232 (1974); Barr v. Mateo, 360 U.S. 564 (1959).

PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 27 (Relating good faith defense to fact in the case).

You are instructed that it is unlawful for any defendant to attempt to disrupt or to interfere with the existence of groups exercising First Amendment rights. The belief by a defendant that a group or person was planning an event at which a disruption might occur, no matter how sincerely held, cannot justify an effort to interfere with the existence of the group.

You are instructed that the plaintiffs are not reponsible for the acts of other persons and the fact that disruptions may have occurred at events planned by the plaintiffs in the exercise of the plaintiffs' First Amendment rights does not justify any defendant from attempting to prevent the plaintiffs from engaging in political demonstrations and related activities in the future or in interfering with these activities. Although the government, both state and federal, has a legitimate law enforcement function in handling disruptions when and if they occur, it cannot, in anticipation that such might occur, undertake to "expose, disrupt, misdirect, discredit, or otherwise neutralize the activities" of people or groups such as the plaintiffs engaged in the exercise of their First Amendment rights.

Authority: Cohen v California, 403 U.S.15 (1971); Cox v Louisiana, 379 U.S. 536 (1965); Healy v James, 408 U.S. 169 (June, 1972); and Plaintiffs' Exhibits #1 and 3, FBI memos.

PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. _____

(Mental Distress from violation of First Amendment rights and invasion of privacy)

You are instructed that the plaintiffs are entitled to compensatory damages for any mental distress they may have suffered as a result of defendants' actual interference with their First Amendment rights should you find such interference did occur.

If you also find that the plaintiff's privacy was invaded and that the invasion was carried out in a manner that violated the Fourth Amendment, you may award additional damages for mental distress caused by this invasion of privacy.

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